No. 273. 41.

Brief of Smith for P. E.

Filed Mar. 11, 1897.

Supreme Court of the United States,

OCTOBER TERM, ~~1896~~.

No. 276.

BENTON TURNER,
Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

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Supreme Court of the United States.

BENTON TURNER, Plaintiff in Error, *against* THE PEOPLE OF THE STATE OF NEW YORK Defendant in Error.	October Term, 1896. No. 273.

Error to the Court of Appeals of the State of New York.

Brief for Plaintiff in Error.

STATEMENT.

The Federal question presented for the consideration of the Court by the present record is, whether a statute of New York—chapter 448 of the Laws of 1885—is valid and constitutional.

The act in question was intended to validate all tax titles then existing to land in certain counties of the State. It provided in substance that all deeds theretofore executed by the Comptroller upon any tax sale, which had been on record for two years, should, after the lapse of six months from the passage of the act, be conclusive evidence of their own validity; but left them subject to cancellation, as then provided by law, by the

Comptroller or by any competent Court by reason of payment of the taxes, or want of power on the part of the town or ward levying them to assess the land.

The act further provided that it should not affect any action, proceeding or application then pending (June 9, 1885) or begun within six months thereafter to vacate any tax sale or deed.

Plaintiff in error denies the validity of this law when set up, as in the present case, by the State in its own favor.

The unusual feature of this statute, and of the litigation which has grown out of it, is, that by means of it the State is seeking, not to enforce collection of its revenues, but to acquire the land of its citizens for public use in evasion of the constitutional requirement of "just compensation."

Facts.

This is an action of replevin brought in the State Court by the People of the State of New York against Benton Turner, the plaintiff in error, to recover the possession or value of a quantity of logs. It was begun April 11, 1887. The complaint alleged that the State of New York was the owner and in possession of a tract of land known as the Southeast Quarter of Township 24, Great Tract One Macomb's Purchase, Franklin County, New York, which land was within and a part of the Forest Preserve of the State of New York; that between September, 1886, and March, 1887, Turner, the defendant below, wrongfully entered upon the land and cut and carried away spruce trees and converted them into saw logs, which he unlawfully detained from the plaintiff. The judgment demanded was the possession of the logs or their value, $5,000 (Record, p. 7).

The answer was a general denial of the complaint and an allegation of title to and possession of the land in question (Record, p. 8).

The action was tried by a Referee (Record, p. 9).

Upon the trial the taking of a quantity of logs from the land in question and their value, $1,250, was admitted (Record, pp. 17, 18).

The only question litigated was that of title.

The land in question is a tract containing 7,500 acres of wild forest land situated in the Town of Harriettstown, Franklin County (Record, pp. 10, 11; Finding X.).

The plaintiff below—the State of New York—claimed title under a sale of the land for unpaid taxes made by the Comptroller of the State in 1877 and a deed of conveyance to the People of the State of New York in pursuance of the sale, dated June 9, 1881, and recorded in the office of the Clerk of Franklin County, N. Y., on June 8, 1882 (Record, p. 17; p. 48, 20th and 21st Findings).

The defendant claimed under the original Macomb Patent of 1798, his immediate predecessor in title being one Christopher F. Norton (Record, p. 18).

The Trial Court found that at the time of the tax sale, October 12, 1877, Norton was the owner in fee simple of the land in question and had actual or constructive possession (Record, p. 51; First Finding of Law).

In June, 1877, a judgment for $59,178.22 was recovered against Norton and docketed in Franklin County (Record, p. 18, Ex. 4). In 1882 Norton died intestate, leaving a widow and eight children, two of whom were infants, his only heirs-at-law (Record, p. 18, Ex. 5).

In December, 1886, the adult heirs of Norton conveyed the land in question to Riley who, a few days later, conveyed to Turner (Record, p. 18, Exs. 11 and 12).

Proceedings were then had to revive the judgment against Norton, and in April, 1887, execution was issued thereon to the Sheriff of Franklin County, who on June 18, 1887, sold the land to Turner for $6,000, and on February 18, 1889, executed and delivered to him the usual sheriff's deed (Record, p. 18, Exs. 6, 7, 8, 9 and 10.)

Neither the State nor any officer on its behalf ever took actual possession of the land (Record, p. 10, Finding IX.: p. 50, Findings 30 and 31).

The tax sale of 1877 was made for the unpaid taxes of 1866 to 1870, both inclusive, amounting to $1,266.46 (Record, p. 10, Finding VI.).

The defendant upon the trial asserted that the taxes of 1867 and 1870 were illegal, and consequently that the sale of 1877 was void. The point alleged against the tax of 1867 was that the assessors verified the assessment roll before the third Tuesday of August, that being the earliest day at which it was possible for the roll to be legally completed.

The tax of 1870 was challenged because the assessors wholly failed to meet to review their assessment, as required by law, and wholly failed to verify the roll.

Defendant, to prove the illegality of the tax of 1867, produced the copy assessment roll from the office of the Town Clerk, it being admitted that the original in the County Treasurer's office had been burned, which showed upon its face that it was verified by the assessors on August 10, 1867 (Record, p. 33, Exhibit C).

Defendant also called as a witness one of the assessors of 1867, and offered to prove by him that in 1867 the roll was verified before the third Tuesday of August (Record, p. 31, 32).

As to the tax of 1870, defendant produced the copy roll (it being admitted that the original had been burned), which contained no affidavit of the assessors, and also called two of the three assessors of that year, and proved by them their failure to meet on the third Tuesday of August (Record, pp. 31–33, Exhibit F).

Defendant also offered to show that the warrants attached to the copy rolls of 1867 and 1870—Exhibits C and F—were the original warrants, and that the signatures of the Supervisors were genuine (Record, p. 33).

The plaintiff objected to the evidence offered to show

what was actually done or left undone by the assessors of 1867 and 1870, upon the ground that chapter 448 of the Laws of 1885 rendered such facts immaterial and prohibited investigation into them. Defendant replied to the objection that the law invoked was repugnant to the Fourteenth Amendment of the Constitution of the United States. The Trial Court sustained the objection and excluded the evidence, defendant excepting (Record, p. 31).

The assessment rolls of 1867 and 1870 were received temporarily subject to the same objections (Record, p. 33). At the close of the trial plaintiff moved to strike out the rolls as immaterial and irrelevant, under chapter 448 of 1885. Defendant opposed the motion on the ground that said statute was a violation of the Fourteenth Amendment to the Federal Constitution. The Court granted the motion and struck out the rolls, defendant excepting (Record, p. 44).

The Referee thereafter made a decision in favor of the plaintiff—the State of New York—in which he found that the tax sale of 1877, "and all proceedings "prior thereto, from and including the assessment of "the land, * * * were regular * * * accord- "ing to the provisions of chapter 427 of the Laws of "1855, and all laws directing or requiring the same, or "in any manner relating thereto, by virtue of the rule "of evidence and limitation prescribed by chapter 448 "of the Laws of 1885" (Record, p. 12, First Conclusion of Law).

To this finding defendant duly excepted (Record, p. 15, 4th exception). Defendant, also, in accordance with the practice which prevailed in the State of New York at the time of the trial (1889), required the Referee to rule on certain specific propositions—among others, that the assessors of the Town of Harriettstown verified the roll of that year on August 10, and not thereafter; that the roll of 1867 so verified was the

one upon which the Supervisors of the County acted in levying the tax of that year, which was one of the taxes for the non-payment of which the sale of 1877 was made; and that in 1870 the assessors of said town did not meet on the third Tuesday of August, or on any day thereafter, to review their assessment.

Each and all of these requests were refused by the Referee upon the ground that "plaintiff's deed is conclusive evidence to the contrary" (Record, p. 49, 23d, 24th and 25th Requests).

To these refusals, and each of them, exceptions were seasonably and separately taken by defendants (Record, p. 15).

The defendant also requested the Referee to find as matter of law that chapter 448 of Laws of 1885, considered either as a curative law or as a statute of limitation when set up in favor of the State, was repugnant to the Fourteenth Amendment of the Federal Constitution, which requests, and each of them, were refused, and exceptions taken (Record, p. 53, Fourteenth and Seventeenth Requests; exception, p. 16).

The position of the learned Referee before whom the cause was tried, as regards the effect of the statute now in question was expressed by him in his opinion, as follows (Record, p. 54):

> "The objections that the assessment roll for 1867 "was not verified after the tenth day of August and "that the assessors did not meet in 1870 for review "of their assessments are obviated by chapter 448 of "the Laws of 1885. Indeed, the effect of this enact- "ment being to make the conveyance under which "the plaintiff claims conclusive evidence, under the "circumstances of this trial, of regularity in these re- "spects, it cannot be found that such objections have "any basis of fact; nor is this statute unconstitutional in that regard" (citing People *vs.* Turner, 117 N. Y., 227).

Judgment was duly entered upon the report of the Referee in favor of the State of New York for $2,198.60.

Defendant appealed therefrom to the General Term of the Supreme Court of the State, which affirmed the judgment. He then appealed to the Court of Appeals of the State, which affirmed the judgment.

ASSIGNMENT OF ERRORS.

The State Court erred in holding that Chapter 448 of the Laws of New York of 1885 was valid and constitutional; and, in overruling the claim of plaintiff in error, that said law was repugnant to the Fourteenth Amendment of the Federal Constitution.

The error above assigned runs through the whole record, and led the Trial Court to make a number of rulings to which exceptions were taken, upon which error is further assigned as follows:

I. *The Court erred in finding that the tax sale of* 1877 *and all proceedings leading up to it were regular by force of the rule of evidence and limitation contained in said chapter* 448 (Record, p. 12; First Finding of Law).

II. *The Court erred in rejecting the testimony of the witness Torrance as to whether he verified an assessment roll before the third Tuesday of August because made immaterial by said chapter* 448 (Record, p. 31).

III.—*The Court erred in rejecting as immaterial under said chapter* 448 *the testimony of the witness Miller that the signatures to the warrants attached to the copy rolls produced from the Town Clerk's office for the years* 1867 *and* 1870 *were the genuine signatures of the Supervisors of Franklin County* (Record, p. 33).

IV.—*The Court erred in striking out the assessment rolls of* 1867, 1868, 1869 *and* 1870 *as irrelevant and immaterial under said chapter* 448 (Record, p. 44).

V.—*The Court erred in refusing to find that the assessment roll of* 1867 *was verified on August* 10; *such refusal being based solely on the ground that by said chapter* 448 *the Comptroller's deed was conclusive evidence to the contrary* (Record, p. 49; 23d Request).

VI.—*The Court erred in refusing to find that the assessors did not meet in the year* 1870 *to review their assessments, such refusal being based solely on the ground that by said chapter* 448 *the Comptroller's deed was conclusive evidence to the contrary* (Record, p. 49; 25th Request).

VII.—*The Court erred in refusing to find that said chapter* 448, *in so far as it attempts to validate past tax sales, which were void when made, is repugnant to the Fourteenth Amendment to the Federal Constitution* (Record, p. 53; 14th Request).

VIII.—*The Court erred in refusing to find that said chapter* 448, *considered as a statute of limitation, and with reference to tax sales made before its passage to the People of the State of New York, which sales were illegal and void when made, is repugnant to the Fourteenth Amendment to the Federal Constitution.*

Before proceeding to discuss the validity of the law of New York which is assailed by this writ of error we desire to call the attention of the Court to the public policy of that State in regard to acquiring forest lands in the Adirondack Mountains for a public park, as shown by statutes and public documents; and the consequent reversal of the attitude of the State toward its citizens in regard to the purchase of lands at tax sales.

The statutes of the State for many years past have provided for the sale of non-resident lands for unpaid taxes. Such sales are made by the Comptroller, and he is authorized to bid in for the State lands upon which there is no bidder (see Revised Statutes of 1828, vol. 1, pp. 407–414; chap. 427 of 1855, sec. 66. Appendix, p. 52).

The Revised Statutes in regard to tax sales were superseded by chapter 298 of 1850, under which act sales were made by the County Treasurers, but this act was in turn susperseded by chapter 427 of the Laws of 1855, which was a substantial re-enactment of the Revised Statutes. Liberal provision was made for redemption within a given time after the sale (chap. 427 of 1855, secs. 50–56. Appendix, p. 48); for redemption because of occupancy, in whole or in part, at any time after the sale, unless a particular notice were given the occupant (secs. 68–74. Appendix, pp. 53–55); for the assignment by the Comptroller of bids made by him on behalf of the State (secs. 66, 67. Appendix, pp. 52, 53), and, finally, for the cancellation at any time of invalid sales (secs. 83–85. Appendix, pp. 57, 58).

Under these statutes, and an administration of them by the Executive branch of the State Government perhaps more liberal than the letter of the law would warrant, the sale of land *to the State* for unpaid taxes was treated as a continuation of the tax lien rather than a transfer of title; the policy of the State being to accept from the land-owner the amount of the taxes, interest and costs, and by cancellation, assignment or redemption to annul the sale.

At the tax sales of 1877 and 1881 upward of 700,000 acres of land in the northern part of the State were bid in by the Comptroller on behalf of the State (see report of Forest Commission to the Legislature of 1885)

About 1880–1885 public sentiment became pronounced in favor of preserving the forests of the State.

In 1883 the sale of land, belonging to the State in the forest counties was forbidden (chap. 13 of 1883. Appendix, p. 89). In 1885 a Forest Preserve was created, consisting of the land then owned, or thereafter acquired, by the State in certain counties constituting the Adirondack region, which lands were declared inalienable (chap. 283 of 1885. Appendix, p. 90).

The holdings of the State within the forest counties had been acquired almost entirely at tax sales. Its titles thereto were notoriously precarious. It was therefore important to protect and validate those titles, and for that purpose chapter 448 of the Laws of 188[illegible]—the statute now in question—was enacted. This act only applies to the forest counties.

The power of cancelling illegal tax sales, which had been claimed and exercised by the Comptroller since about 1823, was nullified by judicial action, the Court of Appeals deciding that the remedy of cancellation given by the statute could not be invoked by the owner of the land sold.

People *ex rel.* Wright *vs.* Chapin (1887), 104 N. Y., 369.

The right of redemption on the ground of occupancy, which had been unlimited in point of time, was, as to past sales, materially limited by chapter 556 of 1890 and 463 of 1892 (Appendix pp. 84–87).

By chapter 624 of 1892 a certain class of tax sales—*i. e.*, those made by the County Treasurers in four of the forest counties between 1850 and 1855—were declared to be legal and valid (Appendix p. 88).

In short the reversal of public policy as regards the tax sale of forest lands was complete.

In his report to the Legislature of 1892, Comptroller Wemple said, pages 37, 39:

"Substantially all the State's lands within the "Forest Preserve have been acquired through

" purchases at tax sales of land sold by the Comp-
" troller as required by law for unpaid taxes re-
" turned to this department by the several County
" Treasurers."

* * * * * *

" The policy of the State has always been, until
" within recent years, not to purchase lands that
" are sold for unpaid taxes unless actually required
" to do so for want of other bidders, and then to
" permit the taxpayers to recover the same by
" liberal treatment upon reimbursing the treasury
" for the taxes, interest and legal charges thereon.

" Now, it seems to be the policy of the State to
" obtain title to all forest lands within the Forest
" Preserve upon tax sales, if possible, and to
" maintain such title, and to resist applications of
" the former owners and their grantees to cancel
" the same or to redeem therefrom under the laws
" of the State, by methods that cannot be deemed
" liberal or fair in many instances.

" The law has always favored the right of re-
" demption, but now a different principle in such
" cases is sought to be enforced in redemptions from
" tax sales of land situated within the Forest Pre-
" serve, which is contrary to that usually applied to
" redemptions affecting land situated elsewhere.
" The State cannot afford to be unjust in dealing
" with its citizens."

In his report for 1893 Comptroller Campbell said, page 41:

" Substantially all the lands now held by the State
" have been acquired through tax sales, and the title
" to a considerable portion of such lands has been,
" and will doubtless continue to be, the subject of
" contention and dispute.

* * * * * *

" The object and purpose of a tax sale is, pri-

"marily at least, the collection of the tax rather "than the acquisition by the State of the lands "upon which it is a lien; but since it became the "policy of the State to acquire title to lands within "the Forest Preserve, the object sought to be at- "tained seems to be the acquisition of such lands "rather than the collection of the taxes due there- "on." * * *

"It was formerly the policy of the State not to "purchase land at the tax sales except when com- "pelled to do so for lack of bidders, and to give a "liberal construction to the statutes regulating "redemptions and cancellations, and give to per- "sons whose lands had been sold for taxes every "opportunity for redeeming them on payment of "the taxes due thereon with interest, together with "the expenses of the sale

"Within the past few years this policy has been "changed and the State has sought to acquire "title to all forest lands within the Preserve sold "for taxes, and to resist by every means in its "power application for the cancellation of or "redemption from such sales" (p. 42).

See also as to the public policy of the State in regard to forest lands. *Matter of Long Lake R. R. Co.* (1896), 11 App. Div, 233.

To carry into effect the change in public policy referred to in the foregoing extracts from the reports of the Comptroller of the State, the statute now in question was enacted. It was an amendment to the existing general tax law of 1855, and is as follows:

Laws of 1885, Chapter 418.

AN ACT TO AMEND CHAPTER FOUR HUNDRED AND TWENTY-SEVEN OF THE LAWS OF EIGHTEEN HUNDRED AND FIFTY-FIVE ENTITLED "AN ACT IN RELATION TO THE "COLLECTION OF TAXES ON LANDS OF NON-RESIDENTS "AND TO PROVIDE FOR THE SALE OF SUCH LANDS FOR "UNPAID TAXES." PASSED JUNE 9, 1885.

SECTION 1. Section sixty-five of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection "of taxes on lands of non-residents and to provide for "the sale of such lands for unpaid taxes," is hereby amended so as to read as follows:

SEC. 65. Such conveyances shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the treasurer or deputy comptroller, and all such conveyances that have been heretofore executed by the comptroller, and all conveyances of the same lands by his grantee or grantees therein named, after having been recorded for two years in the office of the clerk of the county in which the lands conveyed thereby are located, and all oustanding certificates of a tax sale heretofore held by the comptroller that shall have remained in force for two years after the last day allowed by law to redeem from such sale shall, six months after this act takes effect, be conclusive evidence that the sale and all proceedings prior thereto, from and including the assessment of the land, and all notices required by law to be given previous to the expiration of the two years allowed by law to redeem, were regular and were regularly given, published and served according to the provisions of this act, and all laws directing or requiring the same or in any manner relating thereto, and all other conveyances or certificates heretofore or hereafter executed or issued by the comptroller, shall be presumptive

evidence of the regularity of all the said proceedings and matters hereinbefore recited, and shall be conclusive evidence thereof from and after the expiration of two years from the date of recording such other conveyances, or of four years from and after the date of issuing such other certificates. But all such conveyances and certificates and the taxes and tax sales on which they are based, shall be subject to cancellation, as now provided by law, on a direct application to the comptroller, or an action brought before a competent court therefor, by reason of the legal payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid.

SEC. 2. The provisions of this act are hereby made applicable only to the following counties, viz.: Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Sullivan, Ulster, Warren and Washington, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken, or application duly made within six months thereafter for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder.

SEC. 3. This act shall take effect immediately.

ARGUMENT.

FIRST.

The sale of the land in question at the tax sale of 1877 for the unpaid taxes of 1867, 1868, 1869 and 1870 was illegal and void when it was made and the deed made in pursuance of it was wholly inoperative as a transfer of title.

This proposition is substantially conceded. Legislation to validate a past tax sale assumes the original invalidity of the sale.

The reasons why the sale was void when it was made are:

(1) *The tax of* 1867 *was illegal and void because based on an assessment roll verified by the assessors before the third Tuesday of August.*

The course of procedure required by the New York statutes in regard to assessing land for taxation as it was in 1867 was as follows:

(*a*) Assessment roll to be made up by the assessors between May 1 and August 1.

1 R. S., p. 390, sec. 8, and p. 393, sec. 19. Appendix, pp. 7, 11

(*b*) Notice to be given to taxpayers immediately after August 1, of the completion of the roll and that the assessors will meet on the third Tuesday of August to review their assessments.

1 R. S., p. 393, sec. 20, as amended by chap. 536 of 1857. Appendix, p. 11.

(*c*) Roll to be verified by the assessors in a certain prescribed form, when it shall be finally completed.

Chap 176 of 1851, sec. 8. Appendix, p. 31.

(*d*) The verified roll to be delivered to the Supervisors of the town on or before September 1.

1 R. S., 394, sec. 27. Appendix, p. 12.

(*e*) The Supervisors to deliver the roll to the Board of Supervisors, who shall fix the amount of tax, issue a warrant under their hands and seals for its collection, attach it to the roll, or a copy thereof, and deliver it to the town collector on or before December 15.

1 R. S., 395, secs. 33, 35, 36. Appendix, pp. 13, 14.

It is the settled law of New York that an assessment roll cannot be legally completed until the third Tuesday of August, and if verified before then it is void.

Westfall *vs.* Preston (1872), 49 N. Y., 349.

In the case cited the roll was verified by the assessors on July 29, 1865. A tax based on this roll was levied by the Board of Supervisors and the usual warrant issued and delivered to the collector, who, in obedience to it, levied on the property of one of the persons named in the roll to collect the tax imposed. An action was thereupon brought against the supervisors and collector and it was held that the tax was void and that the officers who imposed and sought to collect it were liable as trespassers.

ALLEN, *J.*, says (p.p. 353-355):

"A substantial compliance with the statute in "the measures preliminary to the taxation of per- "sons and property, in all matters which are of the "substance of the procedure, and designed for the "protection of the taxpayer and the preservation "of his rights, is a condition precedent to the "legality and validity of the tax. Among the pre- "liminaries essential to the jurisdiction of the "supervisors is the preparation of an assessment "roll containing a list of the persons and prop- "erty liable to taxation, with the estimated value "of the property, prepared and verified by the as- "sessors, and a substantial compliance with the "terms of the statute prescribing the verification "is necessary to give the board of supervisors "jurisdiction to impose a tax and issue their war- "rant to the collector for its collection. * * *

"In the nature of things, and in the sequence "prescribed by the statute, the roll cannot be

" verified until the time for review and the hear-
" ing of objections is passed, and the objections, if
" any are made, are disposed of. The roll is not,
" and cannot be, completed until then, and the
" duty of the assessors in preparing the roll and
" making the assessments cannot be fully per-
" formed and ended until after the third Tuesday
" of August, the day assigned by statute for the
" meeting of the assessors to review their assess-
" ments. * * *

" The affidavit of the assessors to the assessment
" roll before us was made on the 29th of July,
" although it purported to have been made on the
" 26th of that month. But the assessors could not
" by law then make the affidavit required. They
" had other duties to perform to complete the
" roll before it could be verified, and the time
" had not arrived when by law they could de-
" clare it completed and verify it as the com-
" pleted and perfected roll. The affidavit was a
" nullity, and the defect appearing on the face of
" the paper by the date of the jurat, it conferred
" no jurisdiction upon the board of supervisors to
" impose a tax upon persons or property named
" therein.

" It follows that the supervisors imposing the
" tax and signing the warrant to the collector were
" without jurisdiction and liable as trespassers."

We do not find that the precise point has been again before the New York Court of Appeals, but the decision in *Westfall* vs. *Preston* has become one of the leading cases in the law of tax titles, and has been many times cited and approved.

Jewell *vs.* Van Steenburgh (1874), 58 N. Y., 85, 90.

Bradley *vs.* Ward (1874), 58 N. Y., 401, 406.

Thompson *vs.* Burhans (1874), 61 N. Y., 52, 65.

People *vs.* Suffern (1877), 68 N. Y., 321, 326.

Brevoort *vs.* City of Brooklyn (1882), 89 N. Y., 128, 132.

Shattuck *vs.* Bascom (1887), 105 N. Y., 39, 45.

People *vs.* Turner (1889), 117 N. Y., 227, 235.

In *Brevoort* vs. *City of Brooklyn* (1882), 89 N. Y., 128, EARL, *J.*, speaking of the decision in *Westfall* vs. *Preston*, says (p. 133):

> "In that case the verification of the assessment "roll was made before the time for its final com- "pletion, to wit, the third Tuesday of August, and "it was held to be an absolute nullity, and that "the supervisors had no jurisdiction to impose a "tax upon the persons or property named in the "assessment roll."

In *Smith* vs. *Mosher* (1890), 31 St. Rep., 235, the precise point was before the General Term of the Supreme Court of the State, and it was again held, following *Westfall* vs. *Preston*, that an assessment roll verified before the day on which the assessors (or in that case village trustees acting as assessors), met to review the roll, was a nullity, and that the trustees acting under it were trespassers.

(2) *The tax of* 1870 *was illegal, because the assessors did not meet on the third Tuesday of August to review their assessments.*

People *vs.* Turner (1889), 117 N. Y., 227.

In the case cited—another litigation between the present parties—RUGER, *C. J.*, said (p. 234):

"It may be conceded that, in the absence of a "curative act, an omission by the assessors to hold "meetings for the review of their assessments, and "to give notice therefor as required by statute, is "a jurisdictional defect, which, in a proceeding be- "tween the owner and any one claiming a right in "such property under a tax sale, renders such sale "irregular and void."

(3) *A sale of land for the taxes of several years is wholly void if any one of the taxes for which the sale is made be illegal.*

People *vs.* Hagadorn (1887), 104 N. Y., 516.
Shattuck *vs.* Bascom (1887), 105 N. Y., 39.

(4) *A sale of land for illegal taxes is a nullity, and the deed made in pursuance of it is void and does not in any way affect either the title or possession of the owner.*

Johnson *vs.* Elwood (1873), 53 N. Y., 431.
Thompson *vs.* Burhans (1874), 61 N. Y., 52, 67.

Johnson vs. *Elwood* (1873), 53 N. Y., 431, was an action of replevin for logs. Plaintiff claimed the land from which the logs were cut under a tax sale. The Comptroller's deed to him had been duly recorded.

ANDREWS, *J.*, says (pp. 433, 434):

"His title to the land rests upon the Comptrol- "ler's deed executed on the sale for taxes in 1862. "It is undisputed that at that time the lots were "unfenced, wild and unoccupied, and there were "no acts of ownership on his part after the pur- "chase beyond the appointment of an agent, a "single entry on the land, and the payment of "taxes. It was necessary, therefore, for the plaintiff "to show a constructive possession of the land, and "as the constructive possession follows the legal

" title, if the deed from the Comptroller was valid " the right of action was maintained (*Van Rensse-* " *laer* vs. *Van Rensselaer*, 9 Johns, 377; *Wickham* " vs. *Freeman*, 12 *id.*, 183; *Hubbell* vs. *Rochester*, 8 " Cow., 115). If that deed was void the plaintiff " has no ground to stand upon. It did not divest " the title of the real owner, nor did it confer " any right as against any one. * * * A con- " structive possession of the premises from which " the logs were taken cannot arise upon a void " conveyance. This view is in accordance with " what I understand to be the settled law in this " State (*Bloom* vs. *Burdick*, 1 Hill, 130; *Sharp* vs. " *Speir*, 4 *id.*, 76, 86; *Gardner* vs. *Heart*, 1 N. Y., 528; " *Tallman* vs. *White*, 2 *id.*, 66; *Dike* vs. *Lewis*, 4 " Den., 237; *Doughty* vs. *Hope*, 3 *id.*, 594; *Beek-* " *man* vs. *Bigham*, 5 N. Y., 366; *Whitney* vs. " *Thomas*, 23 N. Y., 281).

The defect in the proceedings which in this case was held to render the deed void was the failure of the assessors to verify the roll.

In the *Thompson-Burhans* case, 61 N. Y., 52, EARL, *J.*, says (p. 67):

" By virtue of the tax sale the plaintiff either " has a valid title or he has none. If all the " steps required by law were taken to authorize a " conveyance by the Comptroller, the plaintiff's " title is valid. If such steps were not taken, then " the title of the owners at the time of the tax sale " was not divested, and the plaintiff acquired no " title."

It follows that the tax sale of 1877, and the Comptroller's deed to the State in pursuance of it, were wholly ineffectual to deprive the then owner—Norton—of his title to and possession of the land. He remained, after the deed, as he was before, seized in fee and in

possession. The State had attempted to deprive him of his title and had failed.

It remains to consider whether what the tax proceeding and deed did *not* accomplish has been done by legislation—whether the title which remained in Norton, notwithstanding the formal sale and conveyance, has since been transferred to the State.

SECOND.

Chapter 418 of the Laws of New York of 1885 is repugnant to the Fourteenth Amendment of the Federal Constitution, in that it deprives the citizen of his property without due process of law.

The act in question seem to have three aspects :

First.—A curative law simply.

Second.—A law establishing a rule of evidence.

Third.—A limitation law.

I.

THE ACT IN QUESTION CONSIDERED AS A CURATIVE LAW SIMPLY IS VOID.

The Comptroller's deed having been void when it was made, and wholly inoperative to divest the title or possession of the then owner, it was not in the power of the Legislature to convert it from a nullity into a valid and operative deed. This would be to transfer property from the owner to a stranger by mere legislative *fiat*.

Such legislation is not due process of law.

Cromwell *vs.* MacLean (1890), 123 N. Y., 474, 489–494.

Denny *vs.* Mattoon (1861), 2 Allen, 361.

Forster *vs.* Forster (1880), 129 Mass., 559.

Orton *vs.* Nooman (1868), 23 Wis., 102.
Hodgdon *vs.* Burleigh (1880), 4 Fed. Rep., 111, 128.

The case of *Cromwell vs. MacLean* (1890), 123 N. Y., 474, seems to be ample authority to warrant the assertion that in the view of the New York Court of Appeals, the act in question has not been and cannot be sustained *as a curative law*. In that case land in Westchester County had been sold for taxes which were illegal because the provisions of the statute in regard to the form and manner of making up the assessment roll had not been obeyed, the assessment being against the "Estate of Edward J. Wilson," instead of in the name of the person who had succeeded to his title. After leases had been executed in pursuance of the sale, the Legislature enacted that "All sales heretofore "had of lands in said county for the non-payment of "taxes, under and by virtue of the act hereby amended, "are hereby confirmed," etc.

This act was held unconstitutional, PECKHAM, *J.*, saying (p. 489):

"Holding, as we must, that no title or interest "in fact passed to the purchaser at these tax sales, "and that the original owner, therefore, still "retained his title, the effect of the act in question, "if valid, is by legislative *fiat* to transfer the title "of the property of Edward C. Wilson, as trustee, "to the lessees under these invalid leases for a "hundred or a thousand years, as the case may "be. Has the Legislature of this State the right "to take the property of A and transfer it to B, "under the guise of confirming sales made of "such land *in invitum*, but by which no title, in "fact or in law, passed from the owner to the "purchaser? The statement of the question

"should be its best answer. Property thus taken
"is not taken by due process of law.

In *Forster* vs. *Forster* (1880) 129 Mass., 559, the collector in advertising the land for sale stated that he would sell the land described or "such undivided portion thereof as may be necessary." This last clause was improper, as such mode of sale was unauthorized by the statute. It does not appear whether the sale as actually made was of the whole or of an undivided interest. The Courts having decided that sales made in pursuance of such a notice were void, the Legislature enacted that they should *not* be held invalid, saving suits pending and cases of land sold since the date of the decision holding such sales void. This statute was held unconstitutional as depriving the land-owner of his property.

We do not deny entirely the validity of retrospective legislation designed to cure imperfections and irregularities relating to the title to land. But when the State has attempted to sell the land of the citizen and has wholly failed, there is no room for such legislation. The appropriate sphere for a *curative* law would seem to be with reference to proceedings which had originally some life in them. To give legal effect and validity to a deed which was void when made is to create rather than to cure.

In the *Forster* case above cited (129 Mass., 559), will be found a classification by Chief-Justice GRAY of the cases in which retroactive legislation has been sustained. One of these classes is:

"5th. Cases of statutes confirming informal or
"irregular assessments of taxes, so that they might
"be collected in the future, but not undertaking to
"give force to illegal seizures or sales of property
"already made."

So far as the cases relate to statutes validating deeds purporting to convey land, we think they may all be embraced under two heads, namely, cases of voidable deeds sufficient to transfer the legal title, but which are liable to attack; and cases in which the transaction between the parties is sufficient to give an equitable title to the person who has attempted to obtain the legal title. In other words, a person seeking the benefit of a curative law must already have some legal or equitable title (though imperfect) to the land. One claiming under a tax deed is not so situated. *He* has by virtue of his deed either the whole or nothing—a perfect title or none at all. There is no such thing as a *voidable* tax deed. Neither is there any equity in a tax title. Such a claimant stands upon the law alone, and by the law must his claim be judged (see opinion of GRAY, *C. J.*, in *Forster* vs. *Forster* (1880), 129 Mass., 559, 561, and *Miller* vs. *Cook* (1890), 135 Ill., 190, 207).

There is a wide distinction as regards the power of the Legislature to enact curative laws between tax proceedings which have not yet culminated in a sale and a formal but void conveyance of land for taxes. As to tax proceedings, merely, we concede the almost absolute power of the Legislature. As to them the rule laid down by Judge Cooley may well enough apply:

> "If the thing wanting or which failed to be
> "done, and which constitutes the defect in the pro-
> "ceedings, is something the necessity for which
> "the Legislature might have dispensed with by
> "prior statute, then it is not beyond the power of
> "the Legislature to dispense with it by subsequent
> "statute. And if the irregularity consists in doing
> "some act, or in the mode or manner of doing
> "some act, which the Legislature might have made
> "immaterial by prior law, it is equally competent
> "to make the same immaterial by a subsequent

"law" (Cooley's Constitutional Limitations, 6th Ed., p. 457).

In *Mattingly* vs. *District of Columbia* (1878), 97 U. S., 687, the rule as above stated was approved by this Court.

The defects in the tax proceedings shown in the present case anterior to the sale—the improper verification of the roll, and the failure of the assessors to meet to review their assessments—might no doubt have been cured as regards the tax itself, giving, of course, an opportunity to the land-owner to pay the tax when validated, and in default of payment the land might then have been sold.

Cromwell *vs.* MacLean (1890), 123 N. Y., 474, 490.

Mattingly *vs.* District of Columbia (1878), 97 U. S., 687.

It will no doubt be argued that the defects in the proceedings anterior to the sale in the present case were not "jurisdictional," and therefore that the Legislature has the same power as against such defects to give effect to a tax deed that it had to cure the tax itself. If it be meant by this that notwithstanding their existence, the Comptrollor's deed to the State was valid and effectual, the answer, of course, is that, whether called "jurisdictional" or not, they did by the settled law of New York, as already shown, render that deed a nullity. If, however, the argument based on this word concedes the original invalidity of the Comptroller's deed by reason of those defects, and simply seeks to build up a distinction between deeds void for defects jurisdictional and those non-jurisdictional (relying probably on *Ensign* vs. *Barse* [1887], 107 N.Y., 329, 346), then we say that there is no room for such a distinction. A tax deed is

void, if at all, because of a failure on the part of public officials to obey the law. It may be conceded that some provisions of tax laws are advisory merely, and that if these be disregarded, the proceedings are nevertheless valid. But as to all mandatory provisions of law the consequence of disobedience is the same—invalidity. Why should it matter whether the particular provision might or might not have been dispensed with? The deed is a nullity in either case. To allege difference of degree, as between two nullities, seems to involve a contradiction. To assert that one tax deed is void, and that another is *more* void, is absurd. Yet this seems to be the very proposition implied by Judge Finch in his opinion in *Ensign* vs. *Barse* (107 N. Y. 329), where he says that a defect may be "jurisdictional" to avoid a tax deed under the law as it was at the time of sale; but not "*so* jurisdictional" as to be beyond the reach of legislation.

In *Cromwell* vs. *MacLean* ([1890] 123 N. Y., 474), PECKHAM, *J.*, says (p. 492):

> "I think it safe to say that sales made without
> "authority and by which no title passed could not
> "be so far validated as to transfer a title by legis-
> "lative fiat. If the Legislature have designated a
> "certain way in which to make an assessment, al-
> "though it could easily have designated some
> "other just as legal, yet the manner designated
> "must in substance be carried out, although many
> "of the provisions might have been omitted by the
> "Legislature, and a constitutional assessment still
> "levied. If any of those provisions of a material
> "nature have been omitted, so that no valid assess-
> "ment has been made, and no title transferred to
> "the person assuming to purchase at the subse-
> "quent tax sale, I am fully persuaded there is no

" power in the Legislature to pass any act the ef-
" fect of which shall be to thereby transfer the title
" of the original owner to the purchaser, to the
" same extent as if the whole proceedings from as-
" sessment to sale had been valid. This can-
" not be done under the guise of confirming
" sales of lands theretofore made for the non-
" payment of taxes. If such proceedings have
" been so far futile as to leave the title to his
" property in the original owner, notwithstanding
" the attempt to transfer it by the statutory pro-
" ceedings, no legislative act can take such title
" from him and transfer it to another. This an-
" swers the question asked by defendant's counsel,
" in referring to the case of *Shattuck* vs. *Bascom*
" (105 N. Y., 39), whether the Legislature, having
" power to dispense with the assessor's oath in the
" first instance, could not have validated a sale made
" upon an assessment in which the oath actually
" taken was so defective as to amount to a fatal
" variance from the statute? The variance was
" such as to render the assessment void (*Shattuck*
" vs. *Bascom*, *supra*; *Brevoort* vs. *City of Brook-*
" *lyn*, 89 N. Y., 128), and hence no title passed
" under the tax sale. In such case there can be
" no doubt that the legislative power stops far
" short of transferring the title by the simple
" process of attempting to confirm this void sale."

In both *Cromwell* vs. *McLean* and *Forster* vs. *Forster*, the defects which rendered the proceedings void were not "jurisdictional" in the sense that any constitutional right of the taxpayer had been violated. On the contrary, they were acts or omissions which the Legislature might lawfully have authorized. It is true that the Legislature of New York has not seen fit to allow the assessment of a decedent's estate in the name of the dead man, or as the property of his heirs or devisees,

It might do so if it chose. In Massachusetts such an assessment is authorized.

Tobin *vs.* Gillespie (1890), 152 Mass., 219.

Neither has the Legislature of Massachusetts seen fit to allow the sale of an undivided interest in the land, but plainly it might do so.

Black on Tax Titles, 2d ed., secs. 263, 265.

In further support of the general proposition that a void tax deed cannot be made valid by a curative law, see—

Lennon *vs.* The Mayor (1874), 55 N. Y. 361.
Hall *vs.* Perry (1888), 72 Mich., 202.
Magruder *vs.* Esmay (1878), 35 Ohio St., 221.
Marsh *vs.* Chesnut (1852), 14 Ill., 223.
Cowgill *vs.* Long (1853), 15 Ill., 202.
Conway *vs.* Cable (1865), 37 Ill., 82.

II.

Chapter 448 of 1885 considered as an act establishing a rule of evidence merely is unconstitutional and void.

Prior to the passage of the act in question tax deeds were *prima facie* evidence of the regularity of the prior proceedings. By this act all such deeds which have been on record for two years are made, after the expiration of six months, *conclusive* evidence that all the proceedings leading up to such deed were had in strict conformity with the law. In other words, the deed is conclusive evidence of its own validity.

This, we contend, the Legislature cannot do, even as

to prospective sales; *a fortiori* it cannot do so as to the past.

Marx *vs.* Hanthorn (1893), 148 U. S., 172.
Baumgardner *vs.* Fowler (1896), 82 Md., 631.

In the case first cited a statute of Oregon declared that all tax deeds should create a presumption of the regularity of the proceedings, and that the presumption should not be disputed or avoided except by proof of certain facts. With this law in force the tax sale in question was made and proof of other matters than those permitted by the statute was relied on to avoid the deed.

SHIRAS, *J.*, (p. 182):

> "Without going at length into the discussion of "a subject so often considered, we think the con- "clusion reached by the courts generally may be "stated as follows: It is competent for the Legis- "lature to declare that a tax deed shall be *prima* "*facie* evidence, not only of the regularity of the "sale, but of all prior proceedings, and of title in "the purchaser, but that the Legislature cannot "deprive one of his property by making his "adversary's claim to it, whatever that claim may "be, conclusive of its own validity, and it cannot, "therefore, make the tax deed conclusive evidence "of the holder's title to the land."

There seems to be no substantial difference between a statute confirming a past deed—declaring it valid and effectual—and one declaring that it shall be conclusive evidence that all things have been done necessary to make it valid and effectual.

The power of the Legislature to enact and change rules of evidence may be conceded. But if the Legislature cannot directly declare a void deed to be valid

it cannot accomplish that end under cover of a "rule of evidence." Such rules do not create or destroy rights, but relate only to the procedure by which existing rights are to be ascertained and enforced. A law which operates to transfer title to property from one person to another may possibly be a valid law, but it is not a rule of evidence. If any given law cannot be sustained for what it really is, it will not aid the matter any to cover it with a cloak and say, This a rule of evidence merely.

III.

Chapter 118 of 1885, considered as a statute of limitation, is unconstitutional and void when set up in favor of the State.

The act was passed in June, 1885. It allowed the land-owner whose land had been illegally sold for taxes six months after the passage of the act in which to institute legal proceedings to vacate the tax sale or deed.

It has been several times before the New York Court of Appeals, and we think it must be taken as settled, that it is a limitation law, and nothing else.

People *vs.* Turner (1889), 117 N. Y., 227.
People *vs.* Turner (1895), 145 N. Y., 451.
Ostrander *vs.* Darling (1891), 127 N. Y., 70.
Joslyn *vs.* Rockwell (1891), 128 N. Y., 354.
Joslyn *vs.* Pulver (1891), 59 Hun, 129, 135.
Turner *vs.* Boyce (1895), 11 Misc., 502.

In the first *Turner* case (117 N. Y., 227), RUGER, *C. J.*, says (p. 232):

"The act, in terms, purports to preserve all ex-
"isting rights of taxpayers for the period of six

"months after the passage of the act, and to es-
"tablish a rule of evidence to govern future con-
"troversies, which made such deeds presump-
"tive evidence of the regularity of the proceed-
"ings upon which they were based, and after
"two years from the recording, conclusive evidence
"of the same matters. With reference to the six-
"months provision, it operates, as to all existing
"cases, as a limitation upon the taxpayer's right to
"assert his claims under pre-existing laws, and, as
"to all future cases, provides that the lapse of two
"years from recording shall make that which was
"before presumptive evidence only, conclusive
"upon the rights of the parties. The act seems
"to be, in its principal aspect, one of limitation,
"and, as such, is within the constitutional power
"of the Legislature to enact as affecting future
"cases, and, we think, within settled rules, equally
"within its power as to existing rights. It gives,
"in all cases, a time for the person aggrieved to
"establish his rights unaffected by the provisions
"of the enactment; but provides that after the
"lapse of a certain time the Comptroller's deed
"shall be conclusive evidence of the regularity of
"the proceedings upon which it is based."

In rendering the judgment now under review, GRAY, *J.*, says, with reference to the decision in the former case:

"It was held that the act, in its principal
"aspect, was one of limitation, and that, as such,
"it was within the constitutional power of the
"Legislature to enact as affecting future cases and,
"as well, existing rights (Record, p. 64; 145
"N. Y., 457).

The validity of this law, as a statute of limitation, has been asserted by the New York Court of Appeals

in the two Turner cases above cited, the second of which is now here for review.

We are not unmindful of the reluctance of this Court to question the validity of State statutes which have been already passed upon and sustained by the State tribunals. But when a right is claimed under the Constitution of the United States, it is the duty of this Court to exercise an independent judgment.

> Bradley *vs.* Fall Brook Irrigation District (1896), 164 U. S., 112, 155.

The plaintiff denies the correctness of the decisions of the New York Court of Appeals and asserts that the statute in question, as a limitation law, is repugnant to the Fourteenth Amendment to the Federal Constitution, in that it deprives a citizen of his property without due process of law, because—

FIRST—*Any statute of limitation to be due process of law must afford some opportunity to the person to be affected by it to assert his rights before the bar falls; and this law did not afford any such opportunity as against the State.*

SECOND—*The owner of land in the full enjoyment of his own property cannot be compelled by legislation to sue for what he has already got under penalty of losing it.*

THIRD—*A statute of limitation, to be valid, must allow a reasonable length of time within which those rights can be enforced the assertion of which it is the object and purpose of the statute to limit.*

I. THERE WAS NO COURT OPEN DURING THE SIX MONTHS ALLOWED BY THE STATUTE IN WHICH NORTON OR THOSE WHO HAD SUCCEEDED TO HIS TITLE COULD HAVE ASSERTED THEIR RIGHT TO THE LAND IN QUESTION AS AGAINST THE STATE.

It is a general rule applicable to all statutes of limi-

tation that, to be operative, there must be not only a person to sue but a person to be sued.

Sanford *vs.* Sanford (1875), 62 N. Y., 553.

In Cooley on Constitutional Limitations (6th ed., 449) it is said :

> " All statutes of limitation must proceed on the " idea that the party has full opportunity afforded " him to try his right in the courts. A statute " could not bar the existing right of claimants " without affording this opportunity ; if it should " attempt to do so, it would be, not a statute of " limitations, but an unlawful attempt to extin- " guish rights arbitrarily, whatever might be the " purport of its provisions."

The statute in question conferred no new rights whatever on the land-owner. It provided that the tax sales and tax deeds which it was the object of the statute to validate should be subject to cancellation " *as now provided by law on a direct application to the* " *Comptroller, or an action brought before a competent* " *court therefor* " ; and further, that the act itself should not affect any action, proceeding or application pending at the time of its passage, or begun within six months thereafter, for the purpose of vacating the tax sale.

It is a universal rule of our jurisprudence that a State cannot, without its own consent, be sued.

Kiersted *vs.* The State (1855), 1 Abb. Pr. (N. Y.), 385.

The People *vs.* Dennison (1881), 84 N. Y., 272, 282.

Locke *vs.* The State (1894), 140 N. Y., 480.

United States *vs.* Lee (1882), 106 U. S., 196.

Cunningham *vs.* Macon & Brunswick R. R. (1893), 109 U. S., 446.

Belknap *vs.* Schild (1895), 161 U. S., 10.
Troy & Greenfield R. R. *vs.* The Commonwealth (1879), 127 Mass., 43.

What action, proceeding or application could the owner of land illegally sold for taxes and bought in by the State have brought against the State?

Before what tribunal could Norton's heirs have summoned the State during the six months allowed by this law?

The only possible Courts were the following:

FIRST—*The ordinary Courts of Justice.*

SECOND—*The Comptroller of the State.*

THIRD—*The Board of Claims.*

(1) *The Ordinary Courts.*

To the ordinary Courts of Justice recourse plainly could not be had. The State has never consented to be sued therein.

Locke *vs.* The State (1894), 140 N. Y., 480.

The Act of 1885 itself does not give any such consent.

In *Turner* vs. *Boyce* (1895), 11 Misc., 502, 510, KELLOGG, *J.*, says:

"No provision is made in this law or any other "by which any action or proceeding could be taken "against the State, and without the consent of the "State no such action or proceeding could be "taken.

* * * * * *

"The right to take action or proceedings against "the State must be express, and does not arise by "implication (*Locke* vs. *The State* [1894], 140 N.

" Y., 480). It cannot be claimed that any such con-
" sent was given by the Act of 1885. Such a con-
" sent is not even hinted at in *People* vs. *Turner*
" (1889), 117 N. Y., 227."

It may, perhaps, be urged that even if the State itself could not have been sued, an action might have been maintained against some of its officers as trespassers, and the validity of the title claimed in its behalf, judicially determined, as was done in the *Arlington* case (106 U. S., 196).

There are several answers to this claim:

First—The Trial Court has found as a fact that no officer of the State ever took actual possession (Record, p. 50).

Second—Even if an officer of the State had been in actual possession, an action against him would have availed nothing, as the State would not have been bound by the judgment. Suppose the plaintiff or his predecessor in title had found some officer of the State in possession, and had sued and obtained judgment against him on the ground of the invalidity of the State's title, it would have been no defense to the present action.

Peck *vs.* The State (1893), 137 N. Y., 372.
Carr *vs.* United States (1878), 98 U. S., 433.
United States *vs.* Lee (1882), 106 U. S., 196, 222.

Third—The only remedy which would have been effectual to prevent the operation of the new statute of limitation was a suit or proceeding to cancel or annul the tax deed. The statute plainly contemplates that to avoid its effect the deed itself must be vacated or set aside. But such action, suit or proceeding could not have been maintained against the agent of the State alone. The State

itself would have been an indispensable party; and the State has never consented to be so sued.

Cunningham *vs.* Macon and Brunswick R. R., 109 U. S., 446.

As against the finding of fact that no officer of the State ever took actual possession, it may be urged that the Forest Commission had actual possession as matter of law, and the judgment now under review cited to sustain it.

GRAY, *J.*, says (Record, p. 66; 145 N. Y., 460, 461):

"There may be considerable doubt with respect "to the nature of the possession by Norton and of "this appellant; but, however that may be, the "State was constructively in possession through "the Comptroller's purchase and deed. The effect "was that the State had resumed its ownership of "the land and its title thereto was assured, as "the result of the proceedings, until invalidated "by proof respecting the illegality of the proceed-"ings leading to the tax sale. That title, by force "of the provisions of the act of 1885, became "unquestionable upon the expiration of the six "months after it went into effect. While we think "the People were not bound to take any steps "towards actual possession after the convey-"ance to them of the land, any doubt upon "the subject would seem to be eliminated by "virtue of the provision of the act which cre-"ated the Forest Commission and placed "the Forest Preserve, within which are the "lands in question, in the care, control and "supervision of the Commission. The construc-"tive possession which the State had acquired, "I think, was made an actual possession by the "power and duties devolved upon the Forest "Commission as its representative."

That an ordinary grantee under a void tax deed acquires a constructive possession of the land is contrary to what has been the settled law of the State for many years.

Johnson *vs.* Elwood (1873), 53 N. Y., 431.
Thompson *vs.* Burhans (1874), 61 N. Y., 52, 67, 68.
Thompson *vs.* Burhans (1879), 79 N. Y., 93.

To give to the Comptroller's deed to the State any other or different effect from that given to a similar deed to an individual is contrary to the statute, which is:

"Such purchases shall be subject to the same "right of redemption as purchases by individuals; "and if the land sold shall not be redeemed, the "comptroller shall execute a release therefor, to "the people of this state, or their assignees, which "shall have the same effect, and become absolute "in the same time, and on the performance of the "like conditions, as in the case of sales and conveyances to individuals."

Chap. 427, Laws of 1855, sec. 66. Appendix, p. 52.

To hold that the Forest Commission has anything at all to do with the lands in controversy is a complete begging of the question. That Commission is charged with the care and custody of the Forest Preserve. That Preserve was created in 1885 and is declared by the act creating it to consist of "all the "lands now owned or which may hereafter be acquired by the state of New York within" certain counties, including Franklin.

Chapter 283 of Laws of 1885. Sec. 7 Appendix, p. 90.

Before it can be held that the Forest Commission has anything whatever to do with any given parcel of land, it must first be determined that it is "owned" by the State.

We submit that actual possession must in the nature of things be a question of fact, and that the finding of the Trial Court against such possession by any officer of the State is conclusive.

But if the Court should be of opinion that the Court of Appeals has decided that the Forest Commission was put in actual possession of the land in controversey by force of the statute creating it, and that such decision is binding on this Court as regards the construction of the act, then we answer that the act itself is thereby made unconstitutional and repugnant, not only to the Constitution of the State of New York but also to that of the United States. If the Forest Commission was by the act in question put in actual possession of the land in question, then the true owner was thereby deprived of the possession which the law gave him, and as the act makes no provision for payment, property of the citizen was taken for a public use without just compensation, in violation of the Constitution of the State of New York (art. 1, sec. 6).

Possession of land is an estate in the land.

Mygatt *vs.* Coe (1894), 142 N. Y., 78, 87.
Mygatt *vs.* Coe (1895), 147 N. Y., 456.

It is, of course, essential to the full and complete enjoyment by the owner, but, independent of that consideration, the mere transfer of it from the owner to a stranger necessarily takes a part of what the owner had before the transfer. What the one gains the other must lose (see opinion of O'Brien, *J.*, in *Mygatt* vs. *Coe*, 147 N. Y., at p. 463).

If the actual appropriation of any part of the land of the citizen or the destruction or impairment of in-

tangible easements or appurtenances be a taking of property, as under the authorities it clearly is, it would seem to be too plain for argument that a statute which puts an agent of the State in the *actual*, and therefore in the *exclusive*, possession of land must necessarily be a taking of it. The true owner is thereby disseized and his estate in possession turned into a mere right of action.

The People *vs.* Otis (1882), 90, N. Y., 48, 52.
Story *vs.* N. Y. El. R. R. (1882), 90 N. Y., 122.
Forster *vs.* Scott (1893), 136 N. Y., 577, 584.
Eaton *vs.* B. C. & M. R. R. (1872), 51 N. H., 504.

The State cannot take possession of property, even in the open exercise of the right of eminent domain, without first providing a certain definite and adequate source and manner of payment.

Sweet *vs.* Rechel (1895), 159 U. S., 380.
Sage *vs.* City of Brooklyn (1882), 89 N. Y., 189.
Lewis on Eminent Domain, sec. 456.

So also as the Forest Commission Law (if given the effect claimed for it) ousted the owner from the possession of his own land without notice or an opportunity to be heard, it was not due process of law, and for that reason repugnant to both State and Federal Constitutions.

Stuart *vs.* Palmer (1878), 74 N. Y., 184.
Davidson *vs.* New Orleans (1877), 96 U. S., 97.
Scott *vs.* McNeal (1893), 154 U. S. 34.

In *People* vs. *Otis*, 90 N. Y., 48, an act which provided that the publication of a certain notice in regard to stolen bonds should operate to deprive those bonds of their

negotiable character, was held to violate both State and Federal Constitutions as to due process of law. ANDREWS, *C. J.*, says:

> "Depriving an owner of property of one of its "essential attributes is depriving him of his property "within the constitutional provision, and a legisla- "tive declaration that upon the publication of notice "a negotiable security shall no longer be transferable "is not due process of law, working a forfeiture of "the right given by the contract."

In *Forster* vs. *Scott* (1893), 136 N. Y., 577, O'BRIEN, *J.*, says:

> "Whenever a law deprives the owner of the "beneficial use and free enjoyment of his property "or imposes restraints upon such use and enjoyment "that materially affect its value without legal process "or compensation, it deprives him of his property "within the meaning of the Constitution. All that "is beneficial in property arises from its use and the "fruits of that use, and whatever deprives a person of "them deprives him of all that is desirable in the title "and possession."

An act of the Legislature which puts an adverse claimant of land into *actual possession* thereof deprives the true owner of all present enjoyment and beneficial use; it deprives him of the right to sell and convey the land, and when, as in the present case, the claimant so legislated into possession is exempt from the usual process of the courts, lapse of time will in effect divest his title and destroy his right. Legislation which so operates differs from confiscation only in name.

In no aspect of the case did the Forest Commission have actual possession.

In no form of action, therefore, could the title of the

State have been tried and decided by the ordinary courts of justice.

(2) *Jurisdiction of the Comptroller to cancel.*

The Act of 1855 and the earlier laws, under which tax sales were made authorized the Comptroller to cancel all illegal sales (chap. 427, Laws of 1855, secs. 83, 85. Appendix, pp. 57, 58). The act in question of 1885 did not attempt to confer such power, but assumed it to be already in existence.

Shortly after the passage of the act of 1885 the Court of Appeals decided that the power of the Comptroller to cancel an illegal sale could only be invoked by the purchaser at the tax sale, and that the owner of the land illegally sold was not entitled to ask for a cancellation. This ruling was adhered to by the Court of Appeals in spite of changes in the statute intended by the Legislature to give to the land-owner the privilege which had been denied by the Court, so that *prior to the judgment now under review* it was deemed finally settled that the Comptroller had no power to cancel an illegal tax sale on the application of the owner whose land had been sold.

People *ex rel.* Wright *vs.* Chapin (1887), 104 N. Y., 369.

People *ex rel.* Equitable Life Assurance Society *vs.* Chapin (1887), 105 N. Y., 629.

Ostrander *vs.* Darling (1891), 127 N. Y., 70.

Joslyn *vs.* Pulver (1891), 59 Hun, 129, 135.

People *ex rel.* Hamilton Park Co. *vs.* Wemple (1893), 139 N. Y., 240.

People *ex rel.* Witte *vs.* Roberts (1894), 144 N. Y., 234.

Turner *vs.* Boyce, 11 Misc. (1895), 502.

But in rendering the judgment now under review, GRAY, *J.*, uses this language (Record, p. 66; 145 N. Y., 460):

> "Conceding the irregularity in the assessment "proceedings to have been such as rendered the "sale invalid, nevertheless the assessors had the "jurisdiction and authority to assess, and if they "erred in their proceedings, and neglected to take "the steps which the statute required, there was, "in the first place, the remedy of an appeal to the "Board of Supervisors; and, in the second place, "there was the opportunity to appear before the "Comptroller. By virtue of the Act of 1885, that "opportunity to appear before the Comptroller "and to demand the cancellation of the tax sale, "because of irregularities in the proceedings lead-"ing to the sale, was continued for six months "after the passage of the act. Differing from a case "between the owner of lands and the purchaser "thereof at the tax sale, where the Comptroller "would not have the power upon the application "of the owner to cancel a tax title, here the State "became the owner through the purchase, and it "was open to the owner to come before the Comp-"troller and to make proof of the invalidity of "the sale through which the State derived its "title. With the knowledge of the law, the person "claiming to be the owner of the land sold was "chargeable; and when put upon his inquiry as "to the result of the proceedings, he discovered "the State to have become the purchaser, it was "incumbent upon him to take affirmative steps to "cancel the sale, if he would recover his title to "the lands."

If it had been intended by the Court of Appeals to overrule, limit or distinguish all its former decisions,

it is a little singular that no reference whatever was made to them.

The power of cancellation which Judge Gray speaks of as "continued for six months" by the Act of 1885 is declared in the act itself to be "as now provided by law;" and in the *Wright* case (104 N. Y., 369, 376) when, on the motion for re-argument, the Act of 1885 was pressed upon the Court, it was said in reply by Danforth, *J.*: "It gives no new power."

In the case of *The People* ex rel. *The Equitable Life Assurance Society* vs. *Chapin* (1886), 39 Hun, 230; 103 N. Y., 635; 105 N. Y., 629, the precise point was raised and decided. That was an application made by the relator as mortgagee of certain lands which had been sold to the State at the tax sales of 1877 and 1881. The application was made to the Comptroller on November 20, 1885, and *during the six months following the passage of chapter* 448 *of* 1885; in other words, within the time during which, according to the opinion of Judge Gray, the right "*to demand*" a cancellation from the Comptroller was continued. It was denied by the Comptroller. Upon the appeal to the Court of Appeals, the then Attorney General insisted that the Comptroller had no power to cancel a tax sale of land to the State, and further insisted that the case was controlled by *Wright* vs. *Chapin*, his printed brief upon the latter point being in these words:

> "The question of the right of the relator to
> "demand a cancellation at the hands of the Comp-
> "troller has been fully considered by this Court
> "(see opinion of Danforth, *J.*, in case of People *ex*
> "*rel.* Wright *vs.* Chapin [1884], 4 Eastern Rep.,
> "305).
>
> "The principle of *stare decisis* may therefore be
> "invoked by the Comptroller in this case."

The Court concurred in this view and affirmed the order of the Comptroller, "on the authority of *People*

"ex rel. *Wright* vs. *Chapin*, 104 N. Y., 369" (see 105 N. Y., 629).

[The case of *The Equitable Life* vs. *Chapin* not being fully reported, we have printed the record as it was before the Court of Appeals in full in the Appendix to this brief; p. 106.]

The question has been again very recently before the New York courts. In *People* ex rel. *Millard* vs. *Roberts* (1897), 8 App. Div., 219, affirmed in 151 N. Y., 540 (Appendix, p. 137), it was squarely decided that the Comptroller had no power to cancel an illegal tax sale at which the State had become the purchaser, and O'BRIEN, *J.*, says (p. 543):

> "The objections which have been so often "stated to the exercise of this jurisdiction, at the "instance of the owner, still remain good" (citing above cases). * * *
>
> "It is obvious that there was no intention to mod- "ify or disturb these decisions by anything that was "said in the case of *People* vs. *Turner* (117 N. Y., "227; 145 N. Y., 451").

We think, in view of this last decision of the Court of Appeals, that the controversy as to the power of the Comptroller to cancel an illegal tax sale on the application of the purchaser, is closed. It must be now taken as settled law that such power does not and never did exist.

(3) *Jurisdiction of the Board of Claims.*

The only permission which the Legislature has ever given to sue the State is to be found in the statutes relating to the Canal Appraisers, the Board of Audit and the Board of Claims. Chapter 321 of the Laws of 1870 gave the Canal Appraisers jurisdiction to hear and determine all claims against the State growing out of the use and management of the canals, and *to award such sum as shall be just and equitable* (Appendix, pp. 95, 96).

The Board of Audit was created by chapter 444 of the Laws of 1876, and authorized to hear "all private "claims and accounts against the State" (except those then heard by the Canal Appraisers)," and to allow such "sums as it shall consider should equitably be paid by "the State to the claimants" (Appendix, pp. 96, 97).

The Board of Claims was created by chapter 205 of the Laws of 1883, as amended by chapter 60 of Laws of 1884. The office of Canal Appraisers and the Board of Audit were abolished, the power possessed by them being transferred to the new Board. The jurisdiction given is to hear, *audit* and determine "all private claims against the State * * * "and *to allow thereon such sums as should be paid by "the State*" (sec. 7). The award which the Board is authorized to make "shall contain * * * the "amount allowed the claimant, if any" (sec. 8). (Appendix, p. 102).

This Act of 1883 seems to have been the only one in force in 1885 by which the State had to any extent authorized itself to be sued. Did it authorize the Board of Claims to vacate a tax sale and deed to the State or to try the title of the State to land?

Statutes allowing the State to be sued are strictly construed in favor of the exemption of the State, and no suit can be maintained unless the consent to bring it has been clearly and expressly manifested.

Locke *vs.* The State (1894), 140 N. Y., 480.
Belknap *vs.* Schild (1895), 161 U. S., 10.
Troy and Greenfield R. R. *vs.* The Commonwealth (1879), 127 Mass., 43.
Murdock Grate Co. *vs.* Commonwealth (1890), 152 Mass., 28.

The jurisdiction of the Board of Claims is, we think, confined to claims for money only and does not include those for the recovery of specific, real or personal prop-

perty ; neither can it give judgment against the State for purely equitable relief.

(1) The jurisdiction is to "audit." This can only apply to money claims.

(2) It is "to allow such sums as should be paid." This also clearly contemplates a money demand.

(3) The award of the Board must state the sum allowed. This cannot be done if specific property is in question.

(4) The right of appeal depends on the number of "dollars" in controversy.

It is true that the words "all private claims against "the State" are broad and sweeping, and standing alone might be sufficient to give general jurisdiction of all causes of action whatsoever. But they do not stand alone and they are controlled by the other provisions of the statute which refer to money demands only.

The statutes relating to the Federal Court of Claims seem to be so far similar to the Act of 1883 in regard to the Board of Claims, that the construction given to it by this Court may be fairly cited as bearing on the proper construction of the New York law.

The first act was that of 1855 (10 St. at Large, 612). It gave jurisdiction "to hear and determine all claims "founded upon any law of Congress * * * or upon "any contract, express or implied, with the Govern- "ment of the United States."

In 1863 the Court was reorganized (12 Stat. at Large, 765). The language as to jurisdiction remained unchanged. Appeals from its judgments were authorized *where the amount in controversy exceeded* $3,000 ; if the judgment was affirmed the *sum due* was to be paid, *with interest.*

In *United States* vs. *Alire* (1867), 6 Wall., 573, it was held that the jurisdiction given by these statutes was limited to claims for money only.

NELSON, *J.*, says (p. 575):

> "It will be seen by reference to the two acts of "Congress on this subject, that the only judg- "ments which the Court of Claims are author- "ized to render against the Government, or over "which the Supreme Court have any jurisdiction "on appeal, or for the payment of which by the "Secretary of the Treasury any provision is made, "are judgments for money found due from the "Government to the petitioner. And, although it is "true that the subject-matter over which jurisdic- "tion is conferred, both in the Act of 1855 and of "1863, would admit of a much more extended cog- "nizance of cases, yet it is quite clear that the "limited power given to render a judgment neces- "sarily restrains the general terms, and confines "the subject-matter to cases in which the petition- "er sets up a moneyed demand as due from the "Government."

In *Langford* vs. *United States* (1879), 101 U. S., 341, officers of the United States took possession of certain land, claiming the same as the property of the United States. The plaintiff, claiming himself to be the true owner, brought suit in the Court of Claims. It was held by this Court that the claim, being founded on a tort, was not within the jurisdiction of the Court of Claims.

In 1887 a new act was passed entitled, "An act to "provide for the bringing of suits against the Gov- "ernment of the United States" (24 Stat. at Large, "505).

The first section is as follows:

> "The Court of Claims shall have jurisdiction to "hear and determine the following matters:
>
> "*First*—All claims founded upon the Constitu- "tion of the United States or any law of Congress,

" except for pensions, or upon any regulation of
" an Executive Department, or upon any contract,
" expressed or implied, with the Government of
" the United States, or for damages, liquidated or
" unliquidated, in cases not sounding in tort, in
" respect of which claims the party would be en-
" titled to redress against the United States, either
" in a court of law, equity, or admiralty, if the
" United States were suable."

Concurrent jurisdiction as to all matters named in the first section was given to the Circuit and District Courts, with some limitations as to the amount.

In *United States* vs. *Jones* (1888), 131 U. S., 1, the extent of the jurisdiction conferred by this statute was before this Court. The suit was begun in a Circuit Court, and was a bill in equity against the United States to compel the issue and delivery to the plaintiff of a patent for land claimed to have been taken up and purchased by the plaintiff under and in accordance with an act of Congress.

The United States demurred to the bill. The demurrer was overruled and the United States appealed.

The claim was plainly within the letter of the law. It was founded on a law of Congress and a contract with the United States, and the claimant having paid for the land, as the demurrer of course admitted, was entitled to equitable relief.

The case was elaborately argued in support of the claim, and the Court was strongly urged to amplify jurisdiction in the interests of justice.

BRADLEY, *J.*, says (pp. 15-17):

" It is argued that the new law has extended the
" jurisdiction of the Court of Claims and the con-
" current jurisdiction of the Circuit and District
" Courts, or at least the latter, so as to embrace

"every kind of claim, equitable as well as legal,
"and specific relief, or a recovery of property, as
"well as a recovery of money. * * *

"The jurisdiction here given to the Court of
"Claims is precisely the same as that given in the
"acts of 1855 and 1863, with the addition that it is
"extended to 'damages * * * in cases not
"'sounding in tort,' and to claims for which re-
"dress may be had 'either in a court of law, equity,
"'or admiralty,' * * * . 'Claims, redressible
"'in a court of law, equity, or admiralty,' may be
"claims for money only, or they may be claims for
"property or specific relief, according as the con-
"text of the statute may require or allow."

Then, after showing that the provisions of the former statutes as to appeals, as to paying the judgments and as to interest upon them, which had been relied on in *U. S.* vs. *Alire* (1867), 6 Wall., 573, to limit jurisdiction to money demands, were still in force, he proceeds (p. 18):

"It seems, therefore, that in the point of provid-
"ing only for money decrees and money judg-
"ments, the law is unchanged, merely being so
"extended as to include claims for money arising
"out of equitable and maritime as well as legal
"demands. We do not think that it was the in-
"tention of Congress to go farther than this. Had
"it been, some provision would have been made
"for carrying into execution decrees for specific
"performance, or for delivering the possession of
"property recovered in kind."

The language of the United States statute is certainly as broad as that of the New York statute of 1883. What cause of action is conceivable which is not a claim redressible in a court of law, equity or admiralty? The New York statute contains clauses sub-

stantially similar to those which in the Federal law were held to restrict the sweeping language in which jurisdiction was granted to claims for money only. The thing which may be allowed is a "sum" to be "paid." The language of the judgment or award must express "the amount" allowed. Appeals depend upon the number of "dollars" in controversy.

If these provisions of the statute do not limit the grant of jurisdiction to money claims, then the words, "all private claims," must be held to embrace all causes of action, and the State is suable generally.

That such is not the legislative understanding of the act is evident from the number of special acts passed at every session of the Legislature giving the Board jurisdiction over particular claims (see, *e. g.*, chap. 938 of Laws of 1896, and seventeen other similar acts passed at the same session). All these are unnecessary if the Act of 1883 give general jurisdiction of "all claims against the State."

Further than this, the awards of the Board of Claims are recommendatory merely, and amount to nothing unless the Legislature sees fit to carry them into effect.

The Constitution of the State provides:

> "The legislature shall neither audit nor allow any "private claim or account against the state, but "may appropriate money to pay such claims as shall "have been audited and allowed according to law" (art. 3, sec. 19).

See also sec. 6 of Board of Claims Act (Appendix, p. 101).

If the decision of that board be in *favor* of the State, it is declared to be final and conclusive, though even then if money be found due the State, on a counter claim, an action must be brought on the award in the ordinary courts to collect it (sec. 9; Appendix, p. 102). Awards *against* the State are not made

final and cannot of themselves be enforced. The board is more like a committee of the Legislature than a court of justice. Presenting a claim to it is, in effect, presenting a petition to the Legislature, which it may grant or refuse as a majority pleases. If the land-owner was entitled to an opportunity not only to assert but to enforce his right before such right could be lawfully destroyed by a limitation law, then we say that such opportunity was not given by any of the statutes creating the Board of Claims, and any remedy sought in that tribunal would have been wholly illusory.

Railroad Co. *vs.* Tennessee (1879), 101 U. S., 337.
Railroad Co. *vs.* Alabama (1879), 101 U. S., 832.
Baltzer *vs.* North Carolina (1895), 161 U. S., 240.

We say, therefore, that there was no Court open during the running of the six months allowed by the Law of 1885 in which the land-owner could have asserted and enforced his rights against the State. It follows that the statute was inoperative as against him. Statutes of limitation in general do not run against the citizen in favor of the State.

Parmenter *vs.* The State (1892), 135 N. Y., 154–163.
Baxter *vs.* State of Wisconsin (1860), 10 Wis., 454, 458.
Turner *vs.* Boyce (1895), 11 Misc., 502.

In the *Parmenter* case PECKHAM, *J.*, says (p. 163):

" The counsel for the State concedes what would
" also seem quite plain, that if there never had
" been any tribunal created by the State before
" which the claimant could have pressed his claim,
" the statute of limitations would not have com-

" menced to run, because it would have been ab-
" surd to hold there was a statute of limitations,
" within which a claim must be sued when there
" had been neither a person to be sued, nor any
" court or tribunal before which the State could
" be summoned to answer the suit."

It follows as a general proposition that the State can never acquire title by adverse possession, except, perhaps, in cases in which an officer or agent of the State is in actual possession and liable to suit.

Stanley *vs.* Schwalby (1893), 147 U. S., 508.

San Francisco Savings Union *vs.* Irwin (1886), 28 Fed. Rep., 708.

In *Stanley* vs. *Schwalby*, 147 U. S., 508, the United States defended possession of its military reservation at San Antonio under the limitation laws of Texas, because its officer had been in actual possession and, under the rule in the *Arlington Case* (U. S. *vs.* Lee, 106 U. S., 196), liable to suit during the time limited, FULLER, *C. J.*, saying (p. 519):

" Although not bound by statutes of limitation,
" the United States, as we have seen, were en-
" titled to take the benefit of them, and inasmuch
" as an action could have been brought at any
" time after adverse possession was taken, against
" the agents of the Government through whom that
" was done and by whom it was retained, the objec-
" tion cannot be raised against them that the
" statute could not run because of inability to sue."

In *San Francisco Savings Union* vs. *Irwin* [1885] (28 Fed. Rep., 708), FIELD, *J.*, says (p. 715):

" We doubt very much whether the United States
" can acquire title by adverse possession against
" the right of a private citizen. The theory that an

"open and uninterrupted possession of land by a "party, not being the real owner, may ripen into "title, is founded upon the supposed acquiescence "of the owner in the claim of the occupant by his "not entering upon the property, or taking legal "proceedings to recover its possession. Statutes "of limitation do not run against the United States "except when expressly provided by Congress, and "no action will lie against them by a private citi- "zen except by their consent. Legal proceedings "to enforce the claim of a citizen to lands in pos- "session of the United States could not, there- "fore, be taken, and no statutes can run against "one to whom the courts are closed for the "maintenance of his claim. Nor could the citizen "assert his claim to such lands by entering upon "them. There can be no private entry upon land "for the assertion of one's rights, where the law "does not allow an action against the occupant for "the possession."

The New York Code, section 367, provides that an entry on lands shall be of no avail unless followed by an action with one year.

II. THE OWNER OF LAND IN THE FULL ENJOYMENT OF HIS PROPERTY CANNOT BE COMPELLED BY LEGISLATION TO SUE FOR WHAT HE HAS ALREADY GOT UNDER PENALTY OF LOSING IT.

We contend that the statute is not valid as against an owner who at the time his land was sold, and at the time of the passage of the act, was in possession, actual or constructive, of his own land.

The land was sold to the State in 1877 and the deed executed and recorded in 1881.

The law now in question was passed in June, 1885, and the six-months limitation expired in December, 1885.

It has been found as a fact in the present case that the State never took possession, so that while the limitation was running, the land was in fact vacant (Record, p. 10, Findings VI. and X.).

The question then relates to a statute which operates, if at all, to perfect the title of a tax purchaser who has never taken or acquired actual possession of the land. Can a tax purchaser who got nothing by his deed alone keep silence until such a statute has run and *then* eject the former owner?

In *Joslyn* vs. *Rockwell* (1891), 128 N. Y., 334, 339, the Act of 1885 we are now considering was before the Court of Appeals, and its validity challenged as against the owner in possession of his land. The question, however, was not decided, PECKHAM, *J.*, saying (p. 339):

> "There is very weighty authority for holding "such a statute in the case of one in possession to "be invalid (Cooley, Con. Lim. [3 1 ed.], 366, and "cases cited in note 1). We leave the matter with- "out expressing an opinion in regard to it."

Limitation laws are statutes of repose (Story, *J.*, in Bell *vs.* Morrison [1828], 1 Pet., 351, 360). They proceed on the theory that when the existing state of thing has continued for a certain time it shall not thereafter be disturbed. When the statute has run, the position of the parties is precisely what it was before. It changes nothing; on the contrary, it prohibits change. They operate, and must operate, in favor of possession, and never against it. Such a statute is a weapon of defense only—a shield and not a sword.

> Morey *vs.* Farmers' Loan and Trust Co. (1856), 14 N. Y., 302. 309.

A person who has a right and fails to enforce it within the time fixed by law may well be held to have forfeited that right.

> Cooley, Const. Lim., 6th ed., p. 449.

But how can that theory apply to the case of an owner in possession? Take the present case. At the time of the tax sale of 1877, Norton was owner. It has long been the settled law of this State that possession of vacant land follows in the wake of the legal title. Norton was, therefore, in possession.

Bliss *vs.* Johnson (1883), 94 N. Y.,235, 242.
U. S. *vs.* Arredondo (1832), 6 Pet., 691, 743.

The Trial Court has so found (Record, p. 51).

And such constructive possession was not divested by the illegal tax sale.

Johnson *vs.* Elwood (1873), 53 N. Y., 431, 434.
Thompson *vs.* Burhans (1874), 61 N. Y., 52, 67.
People *ex rel.* Millard *vs.* Roberts (1896), 8 App. Div., 219, 222.
Gomer *vs.* Chaffee (1882), 6 Col., 314, 316.
Patton *vs.* Luther (1877), 47 Iowa, 236.

What cause of action accrued to him by reason of the tax sale? What could he sue for? The title? He had it already. Possession? That also was his. What was there that the law could give him?

As long ago as the time of Lord Coke it was ruled:

> "That no fine nor warranty shall bar any estate "in possession, reversion, or remainder, which is "not devested and put to a right; for he who has "the estate or interest in him cannot be put to his "action, entry, or claim, for he has *that* which the "action, entry or claim would vest in, or give him."
>
> Podger's case, Coke Rep., Pt. IX., p. 106.

It may be said that he could have sued to cancel the sale as a cloud on title. Assuming that such an action

could have been maintained, what need was there for it? The sale was void. He knew it was void. He knew that he could defend himself whenever attacked. Why should he take the burden of the assault? Ordinary statutes of limitation may no doubt apply to ordinary suits to cancel a cloud on title; but was it ever asserted that the omission for ten years to scatter the "cloud" operated to divest the true owner of his title? Has it ever been held that the "shadow" of title cast by a "cloud" becomes real and substantial by mere lapse of time? Unless, then, there was something for which Norton or his heirs could have sued, there was no action to limit, no right to bar.

If the tax sale of 1877, the deed based on it in 1881, and the statute of 1885 were together sufficient to vest title in the State, when was it done? In all cases of the transfer of title to land, there is a moment of time at which it can be said the title passes. In ordinary cases it is at the delivery of the deed. But in the present case the deed itself did not so operate, for it was void when it was made. If it be said that the title passed when the Act of 1885 was enacted, or when the six months expired, then in either case the transfer of title was by legislative *fiat*.

All this is very different in a case where the holder of the formal but void tax deed enters upon the land claiming the title and clothes himself with possession. He thereby disseizes the true owner and does in law acquire the estate. He is from that moment a freeholder—seized in fee of the land.

> "Disseizin is the privation of seizin. It takes "the seizin or estate from one man, and places it "in another. It is an ouster of the rightful owner "from the seizin. It is the commencement of a "new title, producing that change by which the "estate is taken from the rightful owner, and "placed in the wrongdoer. Immediately after a

" disseizin the person by whom the disseizin is
" committed, and who is called the disseizor, has
" the seizin or estate ; and the person on whom this
" injury is committed has merely the right or title
" of entry."

2 Preston, Abstracts of Title, p. 284.

The disseizor has an estate of inheritance, and if he die in possession the law casts both that estate and the possession on his heir.

Washburn, Real Property, 5th ed., vol. 3, p. 140 (*487).

The rights of the true owner, the disseizee, rest in action only. He cannot devise the land (Goodright *vs.* Forrester [1807], 8 East, 552, 566); neither can he convey it without regaining seizin, because a right of action was not by the common law transferable.

" After an *actual disseizin* the disseizee could
" not devise or dispose of the lands, inasmuch as
" his interest was by the disseizin cut down to a
" right of entry which the policy of the old law
" against maintenance would not allow him to de-
" part with ; and, further, if a descent was cast
" after a year, he lost his right of entry, and was
" put to his real action in order to reinstate him-
" self."

2 Smith's Leading Cases,* p. 397 (8th ed., p. 705), Note to Taylor *vs.* Horde.

See also 2 Preston, Abstracts of Title, p. 389.

He is in a position where he must enforce his rights or he may lose them. *His* case is manifestly one which is the proper subject of limitation, and when the time fixed has expired the *title*, which vested in the disseizor immediately on his entry, but which has been defeasible during the running of the statute, becomes perfect

and indefeasible, not by reason of any change in the character of that title—for that has been a freehold of inheritance (though wrongful) from the beginning—but because the right of action of the true owner is barred.

Baker *vs.* Oakwood (1890), 123 N. Y., 16.

In Angell on Limitations (6th ed., p. 397, sec. 390), it is said, quoting from *Abell* vs. *Harris* (1841), 11 Gill & J., 371 :

> "The principle on which the statute of limitations is predicated is not that the party in whose favor it is invoked has set up an adverse claim for the period specified in the statute, but that such adverse claim is accompanied by such invasion of the rights of the opposite party as to give him a cause of action, which, having failed to prosecute within the time limited by law, he is presumed to have extinguished or surrendered; a mere claim of title, unaccompanied by adverse possession, gives no right of action to the person against whom it is asserted, and consequently his rights are unaffected by the statute."

In Cooley on Constitutional Limitations (6th ed., p. 449 and note 3), it is said :

> "All limitation laws, however, must proceed on the theory that the party, by lapse of time and omissions on his part, has forfeited his right to assert his title in the law. Where they relate to property, it seems not to be essential that the adverse claimant should be in actual possession; but one who is himself in the legal enjoyment of his property cannot have his rights therein forfeited to another, for failure to bring suit against that other within a time specified to test the va-

"lidity of a claim which the latter asserts, but "takes no steps to enforce."

The author adds, in a note (note 3):

"This circumstance of possession or want of "possession in the person whose right is to be ex- "tinguished seems to us of vital importance. How "can a man justly be held guilty of laches in not "asserting claims to property, when he already "possesses and enjoys the property? The old "maxim is, 'That which was originally void can- "not by mere lapse of time be made valid;' and "if a void claim by force of an act of limitation "can ripen into a conclusive title as against the "owner in possession, the policy underlying that "species of legislation must be something beyond "what has been generally supposed."

In *Joslyn* vs. *Pulver* (1891), 59 Hun, 129, LANDON, *J.*, says, with reference to the statute we are now considering (p. 135):

"The proper office of a statute of limitations is "to put an end to claims which are not asserted "within a reasonable time, not to put an end to "defenses to such claims. Time is one of the "muniments of the possessor's title and the de- "stroyer of the non-possessor's claim. We do not "think the rule should be reversed so as to make "the claim stronger as it becomes staler. Limita- "tion laws cannot compel a resort to legal pro- "ceedings by one who is already in the complete "enjoyment of all he claims."

See also *Turner* vs. *Boyce* (1895), 11 Misc., 502, 509.

Similar questions have arisen in other States.

The Michigan Tax Law made a deed which had been on record for two years, except in certain cases, where

it had been annulled by the courts, conclusive evidence in favor of the tax purchaser (Laws of 1853, chap. 86, sec. 124, as amended by Laws of 1858, p. 190).

Another section of the same act dealt with purchases by the State at tax sales, and declared that after the lapse of five years the title of the State should be absolute and no action should be maintained to question it (Laws of 1858, p. 192, amending sec. 135 of the Act of 1853). During the five years authority was given to sue the Auditor-General (Act of 1853, chap. 86, sec. 133, as amended by Laws of 1858, p. 192).

In *Quindon* vs. *Rogers* (1863), 12 Mich., 168, the section making the deed conclusive in favor of the tax purchaser, after being on record two years, was held unconstitutional and void, but on the ground that no remedy had been provided for the land-owner, the attempt of the Legislature in that direction having been overthrown by the Court as unconstitutional.

In *Groesbeck* vs. *Seeley* (1865), 13 Mich., 329, the validity of the five-years clause was considered. The land had been sold to the State in 1858, held by the State for more than five years, and then conveyed through *mesne* conveyances to Seeley, who brought ejectment. The defendant offered to show that the tax sale was irregular, illegal and void. The Court rejected the evidence, and a verdict was rendered for Seeley.

CAMPBELL, *J.*, said (p. 342):

> "The defendants below offered to show that the
> " taxes for which the lands were sold were illegal
> " for non-compliance with the statutes. The Court
> " refused to permit this, on the ground that, by
> " section 135 of the tax law, the title to land bid
> " off by the State is made absolute and indefeasi-
> " ble after five years, and no adverse title can be
> " allowed to be set up against it, either by a plain-
> " tiff or by a defendant. Such is plainly the pro-

" vision of the statute, and the only question, " therefore, is, whether such a law can be main- " tained.

" This point is substantially like that which " arose in *Quinlon* vs. *Rogers*. In that case a stat- " ute cutting off all adverse rights two years after " a deed had been recorded, was held invalid, on " the ground that it was depriving a party of his " rights without due process of law. * * * " There is no principle on which such legislation " can be maintained. The only manner in which " a party holding a lawful and vested right in " property can be prevented from asserting it " against one which was not lawful in its inception, " is by the operation of limitation laws. These " laws do not purport to take away existing rights, " although their operation may often have substan- " tially that result. But they are designed to " compel parties whose rights are unjustly with- " held from them to vindicate their claims within " some reasonable time. If a person who has " been ousted of his possession or dominion de- " sires to regain it, he knows that he must resort " to those means which are furnished by the law, " either by the peaceable act of a party himself, or " by legal prosecution. A limitation law simply " requires him to proceed and enforce these rights " within some reasonable time, on pain of being " deemed to have abandoned them. Such laws " can only operate on those who are not already " in the enjoyment and dominion of their rights. " A person who has a lawful right, and is actually " or constructively in possession, can never be " required to take active steps against opposing " claims. The law does not compel any man who " is unassailed to pay any attention to unlawful " pretenses which are not asserted by possession

" or suit. When such a title is set up, he has a " right to defend himself, by jury, if the claim is " one of common law cognizance, or otherwise, if " of a different nature. But to hold that, under " any circumstances, a man can be deprived of a " legal title without a hearing, is impossible, with- " out destroying the entire foundations of consti- " tutional protection to property. No one can be " cut off by limitation until he has failed to prose- " cute the remedy limited ; and no one can be com- " pelled to prosecute, when he is already in pos- " session of all that he demands.

" This statute does not purport to be a limita- " tion law. It is designed by its express terms to " deprive persons of their titles, whether in pos- " session or not, by mere lapse of time. If the " proceedings to sell for taxes were illegal, no " lapse of time can change their character, and " they can never, therefore, become legal. If " the tax purchaser obtains possession, and holds " it until protected by a limitation law, he then " becomes safe, not because his tax title is any " more regular, but because the holder of the " better title has become incapable of asserting it. " As an illegal tax title is a nullity, it cannot of " itself divest or affect the true title in any way, and " the true owner cannot be lawfully compelled to " incur expense or take active measures to get rid " of it, unless he sees fit. But if he become ousted, " whether by a pretented tax title holder or by " any adverse claimant, he can only secure the en- " joyment of his rights by active measures, and " the party in possession may then rely on such " possession until it is lawfully assailed, by suit, or " otherwise, within the period of limitation. In " the present case, the party asserting a legal claim, " against one which he claims to have been illegal,

"is in possession as a defendant. The other "claimant is the actor, and insists that, whether "his tax title was legal or worthless originally, it "has become good, although the defendant has "not been previously ousted and guilty of delay in "enforcing this title. If this tax title can be thus "made indefeasible against a title in possession, "by mere lapse of time, it might as well have been "declared so originally. It would in either case "be nothing more nor less than depriving one of "his property without any legal process, and is "simply confiscation by ministerial and not judi-"cial action."

In *Case* vs. *Dean* (1867), 16 Mich., 12, the question arose again under the two-year section of the statute, but the position of the parties was reversed. The plaintiff was the original owner and the defendant was the tax purchaser under a deed which had been recorded more than two years.

CHRISTIANCY, *J.* (after holding that the two-year limitation had been held void in *Quinlon* vs. *Rogers*), says (p. 21):

"It is insisted by the plaintiff in error (defend-"ant below) that he was in the present case in "possession under his tax deeds claiming title "during the two years prior to the institution of "the suit; and that the real ground for holding "the limitation void in *Quinlon* vs. *Rogers* was that "the original owner being in possession and in the "full enjoyment of all he could obtain by suit, the "effect of the statute, if allowed to operate, would "be to divest him of his property without trial or "legal process, as held in *Groesbeck* vs. *Seeley* (13 "Mich., 329) with respect to the attempted limita-"tion of five years under the 135th section of this "act (of 1858); that the defendant below being in

"possession, and the original owners out of pos-
"session, the case does not come within the prin-
"ciple of the decisions cited, and that the statute
"in this case may have its *legitimate effect* as a
"statute of *limitation* without conflicting with the
"Constitution or the decisions referred to."

Then, after showing that the facts proved were not sufficient to constitute possession on the part of the tax purchaser, it is held that the case falls within the principle of the former decisions.

In Minnesota, a statute of March 11, 1862 (Laws of 1862, chap. 4), was as follows:

"Sec. 7. That any person or persons having or
"claiming any right, title or interest in or to any
"land or premises after a sale under the pro-
"visions of this act adverse to the title or claim
"of the purchaser at any such tax sale, his heirs or
"assigns, shall, within one year from the time of
"the recording of the tax deed for such premises,
"commence an action for the purpose of testing
"the validity of such sale, or be forever barred in
"the premises."

In *Baker* vs. *Kelley* (1866), 11 Minn., 480, this statute came up for construction. The action was ejectment by the original owner against the tax purchaser. Evidence to show the invalidity of the tax sale was rejected by the Trial Court, because the action had not been begun within the time limited by the statute, and plaintiff appealed.

WILSON, *Ch. J.*, said (p. 495):

"Suppose it is intended by this law to require
"the original owner to commence an action within
"the time fixed or be forever barred from testing
"or questioning the validity of the assessment or
"sale? Is such a law sanctioned by the Constitu-

" tion? We have seen that this law is intended to
" operate mostly, if not exclusively, on owners or
" claimants in possession, and that if intended as
" a limitation of the time within which ejectment
" may be brought, it is void. It may be admitted
" that it is competent for the Legislature to limit
" the time within which a party in possession may
" commence an action under our statutes to remove
" a cloud from his title, or silence an adverse claim;
" but that it may require him to bring such action
" as a condition to the enjoyment of his property
" in the enforcement or defense of his rights is
" quite a different thing. It is not necessary for a
" party in the enjoyment of his rights to institute
" any proceedings against an adverse claimant, and
" to require him to do so would be, in many cases,
" imposing a grievous and expensive burden. A
" law requiring a party to take such action is not,
" nor has it, any analogy to a statute of limitation.
" Statutes of limitation only operate as an extin-
" guishment of a remedy, and, of course, can have
" no application to a party who neither seeks nor
" needs a remedy."

In *Hill* vs. *Lund* (1868), 13 Minn., 451, the question again arose with reference to the Act of 1862. The suit was brought by the owner in possession to cancel a tax deed as a cloud on title, but the action was held barred.

BERRY, *J.*, says (p. 453):

" The application of the limitation to the present
" action does not deprive the plaintiff of his right
" of property or possession in the premises pur-
" porting to be conveyed by the tax deed.

" The denial of permission to the plaintiff to
" bring an action for the purpose of adjudging the

" tax deed void, as a cloud upon his title, does not
" make the cloud substantial."

The Act of 1862 was soon repealed. In 1881 an act was passed for the enforcement of delinquent taxes by judgment and sale and it was enacted that the judgment and sale provided for " shall not be set aside un-
" less the action in which the validity of the judgment
" or sale shall be called into question, or the defense
" to any action alleging its invalidity, be brought with-
" in nine months of the date of said sale" (Gen. Laws of Minn., 1881, ch. 135, sec. 7).

In *Feller* vs. *Clark* (1887), 36 Minn., 338, this statute was held void. The action was brought by the original owner to quiet title. The defendant set up a tax title, and on that title based a counter-claim and asked that he be adjudged the true owner. The land was vacant and the suit was not brought until more than nine months after the trial. The judgment of the District Court was in favor of defendant on the counter-claim.

MITCHELL, *J.*, reversing that judgment, said (p. 340):

" I think, however, that the so-called limitation
" of the Act of 1881 (assuming that it means all that
" respondent claims), is, as applied to the facts of
" this case, unconstitutional and void. It will be
" observed that respondent invokes this limita-
" tion, not merely for the purpose of defeating
" appellant's present action, but also *as the basis*
" *of title in himself under this tax judgment and*
" *sale*. He asks in his answer that the
" title to the land be adjudged in him, and
" such is the judgment of the court. This provi-
" sion of the statute is not, in any proper sense,
" a statute of limitation, as it does not operate as
" the foundation of title to property *in possession;*
" neither does it merely take away certain forms

"of *remedy*, leaving the property right of the "parties unaffected (see Kipp *vs.* Johnson (1884), "31 Minn., 360). But it assumes in effect to declare "that a mere claim of title on paper, unaccom- "panied by possession, shall ripen into good title, "as against the lawful owner in the undisputed "enjoyment of his own property; as where he is in "in the actual occupancy of it, or, as in this case, "where it is vacant and consequently the title "draws to it the legal possession. The Legislature "cannot require a person in the uninterrupted "enjoyment of his own property to commence an "action for the purpose of vindicating his right "against some void claim existing merely on "paper, or to declare that by his failure to do so, "the title of his property shall vest in the holder "of that void claim, who has never been in pos- "session under it."

In Mississippi lands had been acquired by the State under tax sales. In 1876 an act was passed authorizing a sale of those lands by the Auditor, and providing that the deed made by him

"shall be *prima facie* evidence of paramount title, "and no suit or action shall be brought in any "court of this State to vacate or impeach any such "deed, or to maintain any title or deed antago- "nistic thereto, unless the same shall be brought "within one year next after the date of such "Auditor's deed; and after the expiration of one "year from the date of such Auditor's deed, the "same shall be held and deemed by all the courts "of the State to be conclusive evidence of para- "mount title" (Laws of 1876, ch. 105, sec. 8).

In *Dingey* vs. *Poxton* (1883), 60 Miss., 1038, this act was before the courts.

The land in question was the property of Dingey, who died in possession in 1873. In 1875 it was sold to the State for the taxes of 1874. In 1879 the Auditor, in pursuance of the Act of 1876, conveyed to Paxton by deed dated August 26, 1879; Dingey's heirs brought ejectment on November 26, 1880.

The invalidity of the original tax sale of 1875 was conceded and the defense rested on the Act of 1876 and the fact that the action was not brought within one year from the date of the Auditor's deed.

COOPER, *J.*, said (p. 1053-1057):

"There is no doubt of the legislative will as ex-
" pressed in the act. The evident purpose was to
" secure the title claimed by the State against all
" attacks by the owner upon any ground after the
" expiration of the time limited. The act has a
" two-fold operation; first, it prescribes a short
" period of limitation, after which no suit shall be
" brought by the owner for the recovery of the
" property; secondly, it gives to the conveyances
" under the tax sales a conclusive effect as evidence,
" thereby cutting off all inquiry into the existence
" of irregularities or defects, and thus operates as
" a curative law.

" After much thought and extended examination
" of the authorities, we are constrained to declare
" that, viewed in either light, these provisions are
" in excess of legislative power, and violate those
" fundamental rights of property which are pro-
" tected by that declaration in our bill of rights
" that 'no person shall be deprived of life, liberty,
" or property except by due process of law.'

" Before the entry of the defendant upon the
" lands, the plaintiffs, by their tenant, were in actual
" occupancy of all the land which was susceptible
" of cultivation, and were in the constructive pos-

" session of the whole tract. The sale of the lands
" for the unpaid taxes of 1874 was insufficient,
" under well-settled principles, to divest their
" title. By a proceeding *in invitum* the State had
" attempted to acquire title under its laws as then
" existing and had failed. By a subsequent law it
" provides, that, notwithstanding such failure, the
" shadow of title thus acquired shall become the
" actual title unless attacked within a certain
" time. It is the expiration of time without
" regard to possession which is to transfer title
" from the owner and vest it in the State or its
" vendee or donee. The power of the Legislature
" to prescribe within what reasonable time one
" having a mere right of action shall proceed is
' unquestionable; but there is a wide distinction
" between that legislation which requires one hav-
" ing a mere right to sue to pursue the right
" speedily, and that which creates the necessity
" for suit by converting an estate in possession into
" a mere right of action, and then limits the time
" in which the suit may be brought. The mere
" designation of such an act as an act of limitation
" does not make it such, for it is in its nature
" more than that. Its operation is first to divest
" from the owner the constructive possession of
" his property and to invest it in another, and in
" favor of the possession thus transferred to put
" in operation a statute of limitation for its ulti-
" mate and complete protection. A complete title
" to land, according to Blackstone, consists of
" *juris et seisinæ conjunctio:* the possession, the
" right of possession and the right of property.
" One who is in the actual or constructive posses-
" sion of his lands, and who has the right of pos-
" session and of property, needs no action to en-
" force his rights. He is already in the enjoyment

"of all that the law can give him and cannot be "disturbed in such enjoyment except by 'due "course of law.' If possession and the right of "possession and the right of property are each "an element of title, by what right can the Legis- "lature divest the one if it is prohibited by the "Constitution from interfering with the other? "If it be said that the owner of vacant lands is "only in possession thereof by a fiction of law, "and that the legislature may at any time destroy "such fiction, the reply is that this has not been "done or attempted to be done by the act under "consideration; the fiction remains, but under it the "owner is placed out of, and a stranger is placed "in, possession. It is apparent that the effort is to "do indirectly that which may not be directly "done, to divest title by a mere legislative decree. "* * * What is due process of law in proceed- "ings for the collection of taxes is left by our Con- "stitution largely to the legislative discretion. "The machinery may be simple and the proceed- "ings summary; but it must be a proceeding which "is to be, and not which has been, taken. The "citizen must have an opportunity to comply with "the requirements of the law, and the State, and "not the citizen, must be the actor. If, because "of the negligence of its agents, the State shall "fail to divest the citizen of his title by a sale for "taxes, it may begin anew and collect the amount "to which it is entitled; but having proceeded "and failed, it cannot, by a mere legislative dec- "laration, accomplish what it failed to do by the "proceedings which it had provided."

In Missouri the statute was as follows (Wagner's Statutes, p. 1207 sec. 221):

"Any suit or proceeding against the tax pur- "chaser, his heirs or assigns, for the recovery of

" lands sold for taxes, or to defeat or avoid a sale
" or conveyance of lands for taxes * * * shall
" be commenced within three years from the time
" of recording the tax deed, and not thereafter."

In *Spurlock* vs. *Dougherty* (1883), 81 Mo., 171, this act was held void as against the owner in possession. The action was ejectment by the tax purchaser against the owner. The sale was made in 1872, and the deed to plaintiff recorded in 1874. The suit was brought in 1878, after the time fixed by the statute had run. The land was vacant from the time of the sale until 1878, when defendant—the original owner—entered.

EWING, *C.*, says (p. 182):

"The plaintiff in error insists that by section
" 221, if the tax purchaser records his deed, 'suit
" must be brought within three years to invalidate
" the deed.' * * *

"This suit, it will be observed, is by the 'tax
" purchaser,' and against the defendants, who claim
" to be the owners. If this position be correct, it
" would require the party in possession to sue for
" possession. The defendants being in possession
" and claiming title, had no occasion to sue. No law
" can compel one who has possession under claim
" of right to take legal steps against an outstand-
" ing or opposing claim. Such an one has none
" of his rights assailed, and having all the law can
" give him, he cannot be called upon to litigate or
" contest pretended or alleged claims until he is
" assailed. If one be ousted of his land, he then
" must assert his rights by suit, within the time
" prescribed by law, or forfeit his claim by the
" lapse of time. If not, the law of limitations pre-
" sumes that he has abandoned all claim. Such
" laws can only operate against one who is not

> "already in the enjoyment and dominion of his "rights. Statutes of limitation are designed to "compel one whose rights are withheld to assert "them within the time prescribed, but can have "no effect upon him who has possession. If the "tax purchaser, in this case, had possession, then "the owner must assert his claim by suit within "the time prescribed by the statute or be forever "barred."

This case follows *Groesbeck* vs. *Seeley* (1865), 13 Mich., 329, and *Baker* vs. *Kelley* (1866), 11 Minn., 480.

The same statute was before the United States Circuit Court for Missouri, in *Daniels* vs. *Case* (1891), 45 Fed. Rep., 843, and it was again held to have no application as against the owner in possession.

In Louisiana the statute was, that

> "Any action to invalidate the title to any prop- "erty purchased at tax sale, under or by virtue "of any law of this State, shall be prescribed by "a lapse of three years from the date of such "sale" (Acts of La., 1874, No. 105, sec. 5).

In *Land Trust of Indianapolis* vs. *Hoffman* (1893), 57 Fed. Rep., 333, the United States Circuit Court of Appeals held that this statute did not in any way affect the title of the owner in possession, and that the tax purchaser, seeking to establish his tax deed, must recover, if at all, upon the strength of his own title—following the decisions of the State courts to the same effect.

In some States the statutes are in such form that the recording of the tax deed operates, when the lands are vacant, to put the tax purchaser in constructive possession and thereby set time running in his favor.

This seems to be the theory of the Wisconsin statute.
Jones *vs.* Collins (1863), 16 Wis., 594, 603.
Taylor *vs.* Miles (1870), 5 Kansas, 498, 514.

But as the possession of land is one of the elements of complete and perfect title to that land, the validity of such a statute, *when made to operate upon past deeds*, may well be questioned. The provisions of the fundamental law which protect the property of a citizen must protect equally all the elements which go to make up that property.

The New York statute now in question contains no such provision. It does not provide for transferring to the tax purchaser that constructive possession which the law annexes to the legal title. By another statute, passed on the same day, it is provided that the Comptroller shall publish a certain notice, and that after such publication he shall be deemed to be in *actual possession* of all lands claimed by the State (chap. 453, Laws of 1885, sec. 4. Appendix, p. 83). Both acts are in terms amendatory of chapter 427, Laws of 1855, and should be construed together. The Comptroller did not publish this notice (Record, p. 50; Findings 30 and 31).

It would seem, therefore, that the Legislature had in mind the necessity of ousting the true owner in order to convert his estate in possession into a right of action, to the end that the limitation which they were establishing might run against it. They provided expressly for putting the State, through the Comptroller, in possession. Had this notice been published, the former owner—Norton—would have been disseized and an appropriate case would have existed for the operation of a limitation law. This was, we think, the purpose and intent of the Legislature. It failed of accomplishment through the inaction of the Comptroller.

It is, we think, plain law that neither the execution

nor the recording of a void tax deed operates of itself to divest the true owner of the constructive possession of vacant land.

Johnson *vs.* Elwood (1873), 53 N. Y., 431.
Thompson *vs.* Burhans (1874), 61 N. Y., 52, 67, 68.
Thompson *vs.* Burhans (1879), 79 N. Y., 93.
People *ex rel.* Millard *vs.* Roberts (1896), 8 App. Div., 219.
Little *vs.* Megquier (1822), 2 Greenl., 176.
Marston *vs.* Hobbs (1807), 2 Mass., 433.
Bates *vs.* Norcross (1833), 14 Pick., 224.
Field *vs.* Inhabitants of Hawley (1879), 126 Mass., 327.
Gomer *vs.* Chaffee (1882), 6 Col., 314.
Gates *vs.* Kelsey (1893), 57 Ark., 523.
Taylor *vs.* Miles (1870), 5 Kan., 498, 514.
Patton *vs.* Luther (1877), 47 Iowa, 236.
Woolfork *vs.* Buckner (1895), 60 Ark., 163.

III.—THE PERIOD OF TIME ALLOWED BY THE ACT IN QUESTION—SIX MONTHS—WITHIN WHICH LAND-OWNERS MIGHT ASSERT THEIR RIGHTS AS AGAINST ILLEGAL TAX SALES WAS UNREASONABLY SHORT AND AMOUNTED TO PRACTICAL CONFISCATION.

We concede the power of the Legislature to prescribe new periods of limitation as against existing causes of action, and that the length of time to be allowed for the assertion of such rights is in general a matter of legislative discretion. But the Legislature must allow *some* time, and that time cannot be made so short as to amount to a virtual denial of justice; or, as the rule is commonly expressed, a reasonable time must be given.

Cooley, Const. Lim., 6th ed., p. 450.

Whether the time allowed in any given case is reasonable or not must in the end be a judicial question.

Terry *vs.* Anderson (1877), 95 U. S., 628.
Mills *vs.* Scott (1878), 99 U. S., 25, 27.
Koshkonong *vs.* Burton (1881), 104 U. S. 668, 675.
In re Brown (1889), 135 U. S., 701, 705.
Pereles *vs.* City of Watertown (1874), 6 Biss., 79, 84.
Parmenter *vs.* The State (1892), 135 N. Y., 154, 167.

In *Koshkonong* vs. *Burton* (1881), 104 U. S., 668, it is said by HARLAN, *J.* (p. 675):

> "It was undoubtedly within the constitutional "power of the legislature to require, as to existing "causes of action, that suits for their enforcement "should be barred unless brought within a period "less than that prescribed at the time the con- "tract was made or the liability incurred from "which the cause of action arose. The exertion "of this power is, of course, subject to the funda- "mental conditions that a reasonable time, taking "all the circumstances into consideration, be given "by the new law for the commencement of an "action before the bar takes effect."

The question whether the time allowed by the act in question is reasonable or not must depend, of course, upon the circumstances under which it was enacted. In considering this question we assume that this Court will take judicial notice of everything which was so known to the New York Courts.

Hanley *vs.* Donoghue (1885), 116 U. S., 1.

We also assume that the validity of a statute depends not so much upon what *is* done as upon what *may be* done under it.

Stuart *vs.* Palmer (1878), 74 N. Y., 183.

The question in the present case is, not whether six months was a sufficient time for the owner of the particular land now in question to assert his rights, but whether it was a sufficient time for land-owners generally.

As was said by PECKHAM, *J.*, in the *Parmenter* case above cited (135 N. Y., 154, 168):

> "This question of reasonable time cannot of "course, form the subject of an inquiry in the case "of each individual to be affected by the altera- "tion of the law. It must be decided by the Court "as a question of law, and upon a general consid- "eration of all facts in regard to which Courts will "take judicial notice."

There is first to be considered that there was no public emergency calling for legislative action, like the disorganization of society resulting from civil war, which was relied on by this Court in *Terry vs. Anderson* (95 U. S., 628) to sustain a summary abridgment of the right to assert existing claims.

It is not known that any grave public reasons existed in New York in 1885 which made it necessary for the public good that the right of the owner of *vacant* forest land to assert his title—a right which had never been subject to any limitation law whatever—should be suddenly cut short; or that as to lands held adversely under a tax title, the twenty years allowed by the general limitation law should be reduced to six months.

The words of Mr. Justice PECKHAM in *Parmenter* vs. *The State* used with reference to a statute cutting short the time within which certain money claims might be made against the State, apply to this aspect of the present case (135 N. Y., 154, 170):

> "The Court will take judicial notice of the fact "that there was, in regard to the statute under

" consideration in this case, no grave or public ex-
" igency in existence which appealed to the leg-
" lature, in behalf of the whole people, and for the
" public interests, for the enactment of a statute
" curtailing, to the shortest possible legal time, the
" right to commence actions which, up to the
" passage of the Act of 1883, was unlimited.

The real reason for the passage of the act in question is disclosed in the report of Comptroller Chapin to the Legislature of 1888. He says (p. 19):

" During the past few years attention has been di-
" rected to the importance of preserving our forests
" and of maintaining the State's title, mainly acquired
" through tax sales, to a very large area of wild or
" forest lands. In 1885, and for some time prior
" thereto, it became apparent from the testimony
" given at the trial of trespassers on State lands that
" the State could not, by reason of the irregular
" methods prevalent in past years of assessing lands
" and levying taxes, successfully support its title
" thereto or prevent or prosecute trespassers thereon.
" Chapter 448 of the Laws of 1885 was the outcome
" of such disclosure."

The lands title which was sought to be affected were non-resident lands; that is, lands not actually occupied by the owner or by any one else. It is such lands only which can be sold for unpaid taxes, and the statute in terms is confined to them.

Joslyn *vs.* Rockwell (1891), 128 N. Y., 334.

The area of such land in the forest counties affected by the act was large—upward of two million acres. (See message of Governor Black to the legislature of 1897.)

The owners of such lands may have been citizens of New York or they may have been scattered all over

the United States or resident abroad. The policy of the State had always been to allow land sold for taxes to the State to be reclaimed on payment of the amount due. The legislation now in question was a complete reversal of that policy. How soon after the passage of the new law ought knowledge of its existence to be imputed to them? Sufficient time to allow the new law to become known to those to be affected by it must be given (see *Parmenter* vs. *The State*, 135 N. Y., 167).

Another, and, as it seems to us, a very important circumstance bearing on the question is that the tax deeds to be affected by the new law might extend back over a period of more than half a century. The statute relates to *all* conveyances that have heretofore been executed by the Comptroller. As we have already shown, it has been the practice in New York for the Comptroller to sell non-resident lands for unpaid taxes, and to give deeds therefor, since at least as early as the Revised Statutes of 1828. Many of these deeds were mere waste paper when they were made, and had been recognized and treated as such by all parties concerned. Their existence, though on record, had been forgotten. No rights were claimed under them. The owners of the lands—or those who supposed themselves to be such—may have been paying taxes for years, relying upon the conceded invalidity of these long past and forgotten papers. An illustration of the way in which this statute operates is furnished by the case of *Joslyn* vs. *Pulver* (59 Hun, 129, affirmed *sub nom.*, *Joslyn* vs. *Rockwell* 128 N. Y., 334), in which one party claimed under a tax deed of 1834 and the other under a tax deed of 1856.

LANDON, *J.*, says (p. 135):

> "Here deeds which for more than twenty years
> "were not worth asserting are claimed to be res-
> "urrected and validated by statute."

As soon as the act in question became known to the owner of non-resident land it became incumbent on him, although his title had never been questioned in any way, to at once cause search to be made to ascertain whether, at some remote period the land of which he may have been in unquestioned enjoyment for years had been sold for taxes and a Comptroller's deed recorded. If the search disclosed the existence of such deed, then he must search for the present owners of the formal tax title, who may be either the original purchaser, his heirs, devisees or grantees (for the statute recognizes the grantees of the tax purchaser).

If the record disclosed no conveyance by the original tax purchaser, then it became necessary to discover that purchaser, and whether he were dead or alive. All this it was necessary to do before the land-owner could be in a position to bring suit to attack the void tax deed, the owner of the formal tax title being of course an indispensable party to any suit to set it aside.

Under these circumstances it was absolutely necessary for the Legislature seeking to validate past tax deeds under cover of a statute of limitation to allow to the land-owner time in which to learn of the new law; time to investigate and discover whether or not he was to be affected by it, and time to ascertain whom he must sue; or, to recur again to the words of Mr. Justice PECKHAM in the *Parmenter* case (135 N. Y., 171), time in "which to learn of the passage of the statute, "elect what course to pursue, and, having made the "election, carry out the same."

The time allowed by the statute in question was we contend, wholly insufficient for this purpose.

Had it provided that a tax purchaser, seeking the protection of the new law, should in some way give notice of his claim, as by taking possession of the land, or even by publishing a notice, there might have been

some color of justice to it. But to allow the tax purchaser to keep silent and do nothing to put the true owner on his guard, or call his attention to the necessity of action, is to make the statute a measure of confiscation. It may be said that the tax purchaser by recording his deed had already given notice of his claim. The answer is, that when this was done he had no legal claim, and both parties knew it. His deed, which was void when made, got no life by being spread upon the records, and for years he had himself treated it as the nullity it was by making no claim under it.

The Legislature, not content with passing a law which required nothing to be done to put the landowner on his guard, took affirmative action, which operated, whether so intended or not, to prevent that owner from taking legal action to assert his rights. The act purported in terms to leave all past tax sales subject to cancellation by the Comptroller during the six months after its passage. But this remedy, *when it was too late to resort to any other*, was adjudged to be wholly illusory, by the Court of Appeals in *People* ex rel. *Wright* vs. *Chapin* (1886), 104 N. Y., 369. The man whose land had been illegally sold for taxes was adjudged to have no standing before the Comptroller and not to be "aggrieved" by the action of that official in denying to him the remedy to which the Legislature had apparently said he was entitled.

To recur again to the report of Comptroller Chapin (Report of 1888, p. 22):

> "Within the six months allowed by chapter 448,
> "Laws of 1885, a large number of applications,
> "principally to set aside the State's title to its val-
> "uable wild and forest lands, were filed in this
> "office, but pursuant to the decisions of the Court
> "of Appeals, cited above, the greater proportion
> "of the applicants not being entitled to recogni-
> "tion, such applications have been denied."

We respectfully submit that in determining whether or not the time allowed by the statute within which the land-owner might take action to assert his rights was or was not reasonable, it is proper for the Court to consider the action of the State in holding out to that owner, through one branch of the Government, the promise of a simple and expeditious adjustment of his claim through the Comptroller, and then when "a large number" of such land-owners had acted in reliance upon that promise and allowed the time for other action to expire, to repudiate it through the courts and treat the owner as having forfeited all his rights, through his own laches. Is a law which so operates a reasonable limitation upon the assertion of existing claims, or is it a denial of justice?

As regards lands which had been bought in by the State itself, the situation was still further complicated by the uncertainty which then existed and still exists as to what, if any, remedy was given to the land-owner in such case. Sue the State directly he certainly could not. How could that be done indirectly which directly was for bidden? This was the question which the land-owner was called upon to answer. How much time, under such circumstances, ought reasonably to be allowed in which to "elect "what course to pursue, and, having made the election, "carry out the same"?

It is *now* claimed that the Forest Commission, having been clothed with actual possession by the statute creating it, the land-owner was given a remedy by action of ejectment against that Commission. We have endeavored to show above that the Forest Commission had no such possession, and that the alleged remedy by action against it was wholly illusory. Such an action can only be maintained on the theory that the person proceeded against is individually a trespasser and a wrongdoer. It is a contradiction in terms to say that any man can be made a wrongdoer by operation of law. But, assuming for the

argument that such possession existed, and that such action might have been brought, still we say that the six months allowed by the statute was not a reasonable time within which ordinary citizens and their legal advisers could discover that such remedy existed and avail themselves of it, because,

First—No *act* was done to show that the Commission was in possession (Record, p. 28, Finding IX.).

Second—The statute passed at the same time and *in pari materia* provided that the *Comptroller* should take possession, which he did not do.

Chap. 453 of 1885, Appendix, p. 83.

Third—Any construction *now* made of the law in force in 1885 regarding tax sales, which attaches possession, actual or constructive, to a deed made in pursuance of an illegal tax sale, must of necessity overrule the decisions of the highest court of the State which were then in force which denied such possession (53 N. Y., 431), and is in effect retroactive judicial legislation, designed to save the statute by pointing out a remedy when it is too late for the land-owner to avail himself of it.

Fourth—The construction of the Forest Commission Act which puts that Commission in actual possession is forced and unnatural, and one which was not suggested until long after the bar of chapter 448 had fallen.

We therefore respectfully insist that, so far as a remedy by way of ejectment or other action against the Forest Commission is concerned, it was not known to the land-owner in 1885 that it existed. Its existence is doubtful now.

If the remedy suggested were the only remedy secured to the land-owner by the Act of 1885, six months was not sufficient time within which to compel land-owners to make a discovery which it has taken the courts ten years to make. If the right to bring ejectment against the Forest

Commission existed in 1885, it was hidden so deep in the bosom of the law that knowledge of such right ought not to be imputed to any citizen.

In *Re Brown* (1889), 135 U. S., 705, this Court held that a statute of Virginia requiring legal proceedings to establish the genuineness of coupons attached to bonds issued by the State, to be brought within one year, and invalidating them unless so established, was so unreasonable in point of time, under the circumstances of the case, as to be void.

In the *Parmenter case*, to which we have several times referred (135 N. Y., 154), the New York Court of Appeals held that a statute limiting the time within which certain claims against the State must be filed to three months and some days, was so unreasonably short that, had it been a statute limiting the right of one citizen to sue another, it would have been void as not due process of law. In that case the claimant labored under none of the embarrassments to which, as we have endeavored to show, land-owners were subject with reference to the law of 1885. He knew that he had a claim ; he knew against whom.

The opinion of Mr. Justice PECKHAM in this case contains a full review of the decisions bearing upon the question, and we cannot better call the attention of the Court to them than by quoting such review in full. He says (135 N. Y., 154):

> "Before answering the question in this case it
> "will be well to examine what has been said by
> "other courts upon the matter, even though the
> "express point has not been actually decided in
> "all cases. It will give some idea of the views
> "other judges have taken of the subject.
>
> "In *Hawkins* vs. *Barney's Lessee* (5 Peters, 457),
> "the act reduced the limitation period from twenty
> "years under the original Virginia statute to seven
> "years under the statute of Kentucky, and it was

" held a valid act. The contention in this case " was that Kentucky was bound to continue the " same law of limitations so far as regarded the " lands which were once under the jurisdiction of " Virginia, as obtained in the latter State at the " time of the compact between her and Kentucky. " This contention was not upheld. The case, al- " though it has been heretofore cited as authority " on this point, has, as it seems to me, very little " application.

" In *Jackson* vs. *Lamphire* (3 Pet., 280), the act " of the Legislature of New York (chap. 51 of the " Laws of 1797, passed March 24 of that year) was " claimed to be void as impairing the obligation of " contracts. It rendered a certain award made by " Commissioners to quiet the titles to land in " Onondaga County, a bar to any action not com- " menced within three years after the award. The " act was held valid in any view considered as an " act of limitation as to existing rights or as a re- " cording act.

" In *Sohn* vs. *Waterson* (17 Wall., 596) the statute " gave, as construed by the Court, two years from " its date in which to commence action upon ex- " isting causes of action at the time of its passage, " and it was held sufficient.

" In *Call* vs. *Hagger* (8 Mass., 423), an act limit- " ing the commencement of suit to a period of one " year subsquent to the passage thereof in cases " where a cause of action had already accrued was " thought not to be unreasonable by the Court, but " the statute was, nevertheless, construed an inap- " plicable to a cause of action which had accrued " before its passage.

" In *Krone* vs. *Krone* (37 Mich., 308) the statute " limited the time as to existing causes to one year " from its passage, and it was held reasonable.

" In *Berry* vs. *Ransdall* (4 Met. [Ky.] 292) it was " held that a statute limiting the time to com- " mence action on existing causes of action to thirty " days was unreasonable and invalid.

" In *Lewis* vs. *Harbin* (5 B. Mon. [Ky.], 564, 571), " the Court, per Ewing, *Ch. J.*, said that if a stat- " ute should limit the right to commence an action " upon a cause thereof existing at the time of its " passage to five months thereafter, 'a time scarcely " ' sufficient to enable even lawyers of the commu- " ' nity to learn that such a law had passed, such an " ' enactment would have shocked the moral sense " ' of mankind as unjust and iniquitous.'

" Again, in *Pearce's Heirs* vs. *Patton* (7 B. Munroe " [Ky.] 162, 168), the same Court said that 'six " ' months is not the time prescribed for the suit, " ' but seven years, and if it was, we should hardly " ' regard it as a reasonable time to be constitution- " ' ally available to bar the remedy as a mere act of " ' limitation.'

" In *Pereles* vs. *City of Watertown* (6 Biss., 79), " Hopkins, *J.*, who was United States Judge for " the Western District of Wisconsin, held that a " limitation of one year from the passage of the " act, as applied to existing municipal bonds issued " for negotiation in a foreign market, was clearly " unreasonable and unconstitutional. The learned " Judge conceded that, so far as the statute might " be applicable to causes of action accruing after " the passage of the statute, the Legislature had " absolute power to fix the time within which an " action might be brought, as in such a case he " said the parties may be supposed to have con- " tracted with reference to it ; but a very different " rule was held to apply in regard to statutes of " limitation intended to affect existing causes of " action, and the learned author (Cooley on Con- " stitutional Lim. [5th ed.], 451), says statutes of " this kind must allow a reasonable time, and if

" the period is manifestly too short, the courts will
" hold the statute invalid as in such case consti-
" tuting a denial of justice.

" In our own Court, the case of *Rexford* vs.
" *Knight* was decided in 1854 and reported in 11
" N. Y., 308. The limitation of one year in the
" case of a claimant whose land had already been
" appropriated by the State in which to exhibit
" his claim to the canal appraisers for damages,
" was held sufficient. Judge Johnson, in the
" course of his opinion, said the Court, in order
" to pronounce the law unconstitutional, must see
" that the limitation is so short that the unmis-
" takable purpose and effect of the law is to cut off
" the right of the party, and not merely to limit
" the time in which he may begin to enforce it.

" This language, it must be remembered, is used
" with relation to a statute which in fact gave a
" full year from the time of its passage in which to
" exhibit the claim."

We say, therefore, in all confidence, that considering the situation which existed in the State of New York in 1885 as to lands sold for taxes and bought in by the State, this Court can plainly see that " the unmistakable pur-
" pose and effect of the law " of 1885 was " to cut off
" the right of the party, and not merely to limit the time
" in which he may begin to enforce it."

It follows, therefore, that the law in question, chapter 448 of 1885, is unconstitutional and void.

THIRD.

The judgment of the Courts of New York should be reversed and a new trial ordered.

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Plattsburgh,
New York.

March 1, 1897.

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Supreme Court of the United States.

BENTON TURNER,
Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.

No. 273.

Appendix to Brief for plaintiff in error.

Counsel have endeavored in this appendix to collect the Statutes of New York to which reference is made in the brief, and also those relating to taxation to which reference is made in the opinions of the principal New York authorities cited.

We have intended to submit these statutes as they were at the time the tax proceedings were had which have given rise to this controversy; that is, between 1866 and 1885. We have added some short statutes of a later date amending the act (chap. 448 of 1885), the validity of which is challenged.

We have omitted certain titles of the Revised Statutes relating to taxation of corporations and to certain counties only. We have also omitted from the act creating the Forest Preserve and the Forest Commission certain

sections relating to minor details of the organization and duties of that Commission which do not seem material to any question in the present case.

We have included in this appendix a copy of the record which was before the New York Court of Appeals in *The People* ex rel. *The Equitable Life Assurance Society of the United States* vs. *Chapin as Comptroller,* together with the judgment of that Court thereon, reported in memorandum only in 105 N. Y., 629.

A copy of this record, duly certified by the Clerk of Albany County, in whose office the record remains, is also submitted.

FRANK E. SMITH,
THOMAS F. CONWAY,
Counsel for Plaintiff in Error.

(Took effect January 1, 1828.)

PART I., CHAPTER XIII.

Of the Assessment and Collection of Taxes.

Title I.

Of Property Liable to Taxation.

What Subject to Taxation.

Section 1. All lands and all personal estate within this state, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.

Land Defined.

§ 2. The term "land," as used in this chapter, shall be construed to include the land itself, all buildings, and other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the state; and the terms "real estate" and, "real property," whenever they occur in this Chapter, shall be construed as having the same meaning as the term "land" thus defined.

Personal Estate Defined.

§ 3. The terms "personal estate," and "personal property," whenever they occur in this Chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations. They shall also be [388]

construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Property Exempt from Taxation.

§ 4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the constitution of this state, or under the constitution of the United States:

2. All lands belonging to this state, or the United States:

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them:

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same:

5. The real and personal property of every public library:

6. All stocks owned by the state, or by literary or charitable institutions:

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter:

8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars: and,

9. All property exempted by law from execution.

Deductions in Case of Minister, etc.

§ 5. If the real and personal estate, or either of them, of any minister or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

Lands Sold by the State.

§ 6. Lands sold by the state, though not granted, or conveyed, shall be assessed in the same manner as if actually conveyed.

Individual Owners of Stocks.

§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual, for such stock.

Title II. [389]

OF THE PLACE AND MANNER IN WHICH PROPERTY IS TO BE ASSESSED.

ARTICLE FIRST.

OF THE PLACE IN WHICH PROPERTY IS TO BE ASSESSED.

Lands, Where Taxed.

SECTION 1. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

Lands not Occupied by Owner.

§ 2. Land occupied by a person other than the owner, or may be assessed to the owner occupant, or as non-resident lands.

[As amended by L. 1851, ch. 176.]

Non-resident Lands Defined.

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided.

Lands Divided by Boundary Lines.

§ 4. When the line between two towns or wards divides a farm, or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line.

Personal Estate, where Taxed.

§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case shall property so held under either of these trusts, be assessed against any other person, and in case any person possessed of such personal estate shall reside during any year in which taxes may be levied, in two or more counties, towns or wards, his residence for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted, but the products of any state of the United States, consigned to agents in any town or ward of this state, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents of monied corporations or capitalists be liable to taxation under this section, for any monies in their possession or under their control transmitted to them for the purposes of investment or otherwise.

[As amended by L. 1851, ch. 176.]

Property of Corporations, where Taxed.

§ 6. The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then [390] in the town or ward where the operations of such company shall be carried on. In the case of toll-bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several town or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorized to pay the last preceding dividend, resides.

ARTICLE SECOND.

Of the manner in which Assessments are to be Made, and the Duties of the Assessors.

Assessment Districts.

§ 7. The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward.

Inquiry as to Names of Taxable Inhabitants.

§ 8. Between the first days of May and July, in each year, they shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants, in their respective towns or wards, and also all the taxable property, real or personal, within the same.

Assessment-Roll, Form Of.

§ 9. They shall prepare an assessment-roll, in which they shall set down in four separate columns, and according to the best information in their power:

1. In the first column, the names of all the taxable inhabitants, in the town or ward, as the case may be:

2. In the second column, the quantity of land to be taxed to each person:

[391] 3. In the third column, the full value of such land, according to the definition of the term land, as given in the first Title of this Chapter:

4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

Trustee, Guardian, etc., how Assessed.

§ 10. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him, in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character.

Lands of Non-residents.

§ 11. The lands of non-residents shall be designated in the same assessment-roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

Proceedings of Assessors where Tract is Subdivided.

§ 12. If the land to be assessed, be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows:

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded;

2. If they can obtain correct information of the subdivisions they shall put down in their assessment-rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest;

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation;

4. In a third column, and opposite to the quantity, they set down the valuation of such quantity;

5. If such quantity be a full lot, it shall be designated by the number alone; if it be part of a lot, the part must be designated by boundaries, or in some other way, by which it may be known.

Same, where Tract is not Subdivided.

§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows:

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions, as the case may be;

2. They shall set down in the proper column, the quantity and valuation as above directed; [392]

3. If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient; but if a part only is liable to taxation, that part or the part not liable, must be particularly described;

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed; and if

they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part;

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors;

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of future assessors. And the expense of making such survey and map shall be immediately repaid to the supervisor, out of the county treasury; and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

Survey of Non-resident Lands Divided by Town Line.

§ 14. Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

[Sections 15 and 16 repealed by L. 1851, ch. 176.]

Rule of Valuation.

[393] § 17. All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor.

[As amended by L. 1851, ch. 176.]

Qualification of Rule.

§ 18. The preceding section shall be followed in all assessments made under this Chapter, except where the

assessors shall be specially required by law to observe a different rule.

Roll, when to be completed: Notice.

§ 19. The assessors shall complete the assessment-rolls on or before the first day of August, in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall forthwith cause notices thereof to be left with one of their number; they shall forthwith cause notices thereof to be put up at three or more public places in their town or ward; and in case the assessment-roll shall include property belonging to a railroad corporation, they shall at the same time cause a like notice to be mailed to the treasurer thereof, or delivered to the railroad agent at the nearest station.

[As amended by L. 1857, ch. 536 and L. 1858, ch. 110.]

Contents of Notices.

§ 20. Such notices shall set forth that the assessors have completed their assessment-roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day to meet at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered, and it shall be their duty to adjourn from time to time, as may be necessary, to hear and determine in accordance with the rule prescribed by section fifteen of said title two, such complaints; but in the several cities of this state, the notices, required by this section, may conform to the requirements of the respective laws regulating the time place and manner for revising the assessments

in said cities, in all cases where a different time, place, and manner is prescribed by said laws from that mentioned in this act.

[As amended by L. 1851, ch. 176 and L. 1857, ch. 536.]

Inspection of Roll.

§ 21. The assessor with whom such assessment-roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

[Sections 22, 23, 24, 25 and 26 repealed by L. 1851, ch. 176.]

Delivery of Rolls by Assessors.

[394] § 27. The roll, thus certified, shall, on or before the first day of September in every year, be delivered by the assessors of each ward, in the city of New York, to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting.

Assessors to Act under Instructions from Comptroller.

§ 28. The assessors, in the execution of their duties, shall use the forms, and pursue the instructions, which shall from time to time be transmitted to them by the comptroller.

Neglect of Duty by Assessors.

§ 29. If any assessor shall willfully refuse or neglect to perform any of the duties required of him, by this Chapter, he shall forfeit, to the people of this state, the sum of fifty dollars.

Names of Delinquent Assessors to be Certified.

§ 30. If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment-

roll, the name of such delinquent assessor, stating therein the cause of such omission.

ARTICLE THIRD. [395]

Of the Equalization of the Assessments, and the Correction of the Assessment Rolls.

Supervisor to Examine Assessment Rolls.

§ 31. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment-rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or ward, bear a just relation to the valuations in all the towns and wards, in the county; and they may increase or diminish the aggregate valuations of real estates, in any town or ward, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary, to produce a just relation between all the valuations of real estates in the county; but they shall, in no instance, reduce the aggregate valuations of all the towns and wards, below the aggregate valuation thereof, as made by the assessors.

Lands of Non-residents.

§ 32. The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents, as may be necessary to render such descriptions conformable to the provisions of this chapter; and if such alterations can not be made, they shall expunge the descriptions of such lands, and the assessments thereon, from the assessment-rolls.

Tax to be Set Down.

§ 33. They shall also estimate and set down in a fifth column, to be prepared for that purpose, in the assessment-rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in

dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

Aggregate Valuation to be Determined.

§ 34. They shall also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards, as corrected by them; and shall cause their clerk to transmit to the comptroller, by mail, a certificate of such aggregate valuations, showing separately, the aggregate amount of real and personal estate in each town or ward, as corrected by the board.

Corrected Assessment-Roll to be Delivered.

§ 35. They shall cause the corrected assessment-roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who shall deliver the same to the clerk of their city or town, to be kept by him for the use of such city or town.

Copies to be Delivered to Collectors.

[396] § 36. The boards of supervisors of the several counties in this state, shall cause the corrected assessment-roll of each town or ward in their respective counties, or a fair copy thereof, to be deliverd to the collector of such town or ward, on or before the fifteenth day of December in each year.

Contents of Warrant to Collectors.

§ 37. To each assessment-roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or of a majority of them, shall be annexed, commanding such collector, to collect from the several persons named in the assessment-roll, the several sums mentioned in the last column of such roll, opposite to their respective names.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the monies so to be col-

lected, after deducting the compensation to which he may be legally entitled, to pay,

1. To the commissioners of common schools of his town, such sum as shall have been raised for the support of common schools therein:

2. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein:

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town:

4. To the supervisor of the town, all other monies which shall have been raised therein, to defray any other town expenses: and,

5. To the treasurer of the county, the residue of the monies so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the monies to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorize the collector, in case any person named in the assessment-roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such persons; and it shall require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing.

Supervisors to Transmit Accounts to County Treasurer.

§ 38. As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom, and the time when the

same are to be paid; and the county treasurers, on receiving such account, shall charge to each collector, the sums to be collected by him.

Variation of Warrant in Cities.

§ 39. Wherever the laws respecting cities, shall have directed the monies assessed for any local purpose, to be paid to any person or officer other than those named
[397] in the preceding thirty-seventh section, the collector's warrant may be varied accordingly, so as to conform to such alteration.

Title III.

OF THE COLLECTION OF TAXES, THE DISPOSITION TO BE MADE OF THE MONIES COLLECTED, AND THE PROCEEDINGS IN RELATION TO UNPAID TAXES.

ARTICLE FIRST.

OF THE MANNER IN WHICH TAXES ARE TO BE COLLECTED, AND THE DUTIES OF THE COLLECTOR.

Collector to Call for Taxes.

SECTION 1. Every collector, upon receiving the tax-list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call, at least, once, on the person taxed, or at the place of his usual residence, if in the town or ward for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

Levy of Tax by Distress and Sale.

§ 2. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found, within the district of the collector; and no claim of prop-

erty to be made thereto by any other person, shall be available to prevent a sale. [398]

Notice of Sale of Goods Distrained.

§ 3. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in, at least, three public places, in the town where such sale shall be made. The sale shall be by public auction.

Surplus Moneys Arising on Sale.

§ 4. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was, when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus monies shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law.

Proceedings in Case of Removal of Person Taxed.

§ 5. In case any person upon whom any tax now is, or hereafter shall be assessed, in any ward of any of the cities, or in any town within this state, shall have removed out of such ward or town, after such assessment, and before such tax ought by law to have been collected; or if any person shall neglect or refuse to pay any tax which now is, or hereafter shall be assessed in any ward of either of the said cities, or in any town, upon any estate of such person, situated out of the ward or town in which he

shall reside, and within the county; it shall be lawful, in either of those cases, for the collector of such ward or town, to levy and collect such tax of the goods and chattels of the person assessed, in any ward within the said cities, or in any town within the said county, to which such person shall have so removed, or in which he shall reside.

Collector to Pay Over Monies.

§ 6. Every collector shall, within one week after the time mentioned in his warrant, for paying the monies directed to be paid to the town officers of his town and to the county treasurer, pay to such town officers and county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such monies shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer, and shall entitle him to a credit, in the books of the county treasurer, for the amount therein stated to have
[399] been received; and no other evidence of such payment shall be received by the county treasurer.

Surplus, how Disposed Of.

§ 7. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the state tax, and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and the same shall go to the reduction of the tax of the succeeding year.

Tax on Part of Lot.

§ 8. The collector shall receive the tax on a part of any lot, piece or parcel of land, charged with taxes, provided the person paying such tax shall furnish a particular specification of such part; and if the tax on the remainder of such

lot, piece or parcel of land, shall remain unpaid, the collector shall enter such specification, in his return to the county treasurer, to the end that the part on which the tax remains unpaid, may be clearly known.

Tax on Undivided Share.

§ 9. If the part on which the tax shall be so paid, be an undivided share, then the person paying the same, shall state to the collector who is the owner of such share, that it may be accepted in case of a sale for the tax on the remainder. And the collector shall enter the name of such owner on his account of arrears of taxes.

Collector to Make Return of Unpaid Taxes.

§ 10. If any of the taxes mentioned in the tax-list annexed to his warrant shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county treasurer, or in case of his absence, before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels, belonging to, or in the possession of the persons charged with, or liable to pay such sums, wherein he could levy the same, he shall be credited by the county treasurer with the amount thereof.

Refusal of Collector to Serve.

§ 11. If any person chosen or appointed to the office of collector of any town or ward in this state, shall refuse to serve, or shall die, resign, or remove out of the town or ward, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of such town or ward, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject

to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector, or his sureties, from any liability incurred by him or them.

Warrant to Person Appointed.

[400] § 12. If a warrant shall have been issued by the board of supervisors prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to himself; but if such warrant can not be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, which shall be directed to the collector so appointed. And upon every such appointment, the supervisor of the town or ward, if he shall think it necessary may extend the time limited for the collection of the taxes, for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer.

Proceedings in Case Collector Neglects to Pay over Monies.

§ 13. If any collector shall refuse or neglect to pay to the several town officers of his town or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and return such warrant within forty days after the

date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county; but no such warrant shall be issued by the county treasurer for the collection of monies payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor as above provided.

Execution of Warrant: Disposition of Monies.

§ 14. The sheriff to whom such warrant is directed, shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time therein specified, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. Such part of the monies collected, if any, as ought to have been paid by the collector to town officers, shall be paid by the county treasurer to the officers to whom the collector was directed to pay the same; but if the whole amount of monies due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid to him, before making any payment to the town officers.

Sheriff's Return.

§ 15. If the whole sum due from the collector shall be collected, the sheriff shall so state in his return; but if a part only, or if no part of such sum shall be collected, the sheriff shall state in his return the amount levied, if any, exclusive of his fees, and shall also certify that such collector has no goods or chattels, lands or tenements, in his county, from which the monies, or the residue thereof, as the case may be, could be levied; and in either case, the county treasurer shall forthwith give notice to the supervisor of the town or ward, of the amount due from such collector. [401]

Collector's Bond, when to be Sued.

§ 16. The supervisors shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit; and the monies recovered shall be applied and paid by the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

Where Sheriff Neglects to Make Return.

§ 17. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of such warrant; or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect, by attachment, the whole sum directed to be levied by such warrant.

Where County Treasurer Fails to Collect.

§ 18. In case the county treasurer shall fail to collect, such monies by attachment, he shall certify to the comptroller, that he has issued such warrant, stating its contents, that the sheriff has neglected to return the same, in the manner required by law, or to pay the money levied thereon, as the case may be, and that he has pursued the remedy, thereon, by attachment, without effect.

Where Sheriff to be Prosecuted.

§ 19. The comptroller shall give notice thereof to the attorney-general, who shall immediately prosecute such sheriff, and his sureties, for the sum due on such warrant; which sum, when collected, shall be paid to the treasurer of this state, and by him, on the comptroller's warrant, to the county treasurer.

Satisfaction of Collector's Bond.

§ 20. Upon the settlement of the amount of taxes, directed to be collected by any collector, in any of the towns

or wards in this state, (the city of New York excepted), the county treasurer shall, if requested, give to such collector, or to any of his sureties, a satisfaction piece in writing, and shall acknowledge the same, before some person authorized to take acknowledgments of the satisfaction of judgments in courts of record.

Entry of Record of Satisfaction.

§ 21. Upon the production of such satisfaction piece, acknowledged as aforesaid, the clerk of the county shall enter satisfaction of record of the collector's bond, which shall thereby be discharged.

Fees for Acknowledgment.

§ 22. The officers taking and entering such acknowledgment of satisfaction, shall be entitled to the same fees as for taking and entering acknowledgment of satisfaction of a judgment in the courts of common pleas.

ARTICLE SECOND. [402]

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURERS, AND THE DUTY OF THE COMPTROLLER, AND OTHER OFFICERS THEREUPON.

ARTICLE THIRD. [407]

OF SALES FOR UNPAID TAXES, AND THE CONVEYANCE AND REDEMPTION OF LAND SOLD.

[Articles two and three were repealed by chapter 298 of Laws of 1850 and a system of sales by County Treasurers substituted in place of sales by the Comptroller as directed by the Revised Statutes; the law of 1850 was in turn repealed by chapter 427 of 1855 and the provisions of article two and three of this chapter and title of the Revised Statutes were in substance re-enacted. See chapter 427 of 1855, *infra* page 33.]

[414]

Title IV.

Regulations Concerning the Assessment of Taxes on Incorporated Companies, and the Commutation or Collection Thereof.

(This Title is omitted as containing nothing material to the present case.)

[418]

Title V.

Miscellaneous Provisions of a General Nature.

Town and City Clerks to Certify Names of Assessors.

Section 1. The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October, in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, and the same shall be delivered to the board of supervisors, at their next meeting.

[419]

Delinquencies of Clerks and Assessors.

§ 2. The boards of supervisors of the several counties, at every annual meeting, shall transmit to the comptroller the names and places of abode of the town clerks and assessors, in their respective counties, who shall have willfully refused or neglected to perform the duties required of them in this Chapter; and the comptroller shall thereupon give notice to the district attornies of the proper counties, to the end that they may prosecute such delinquent town clerks and assessors, for the penalties incurred by them.

Securities Belonging to Residents of other States.

§ 3. When any bond, mortgage, note, contract, account or other demand, belonging to any person not being a

resident of this state, shall be sent to this state for collection, or shall be deposited in this state for the same purpose, such property shall be exempt from taxation; and nothing contained in this Chapter shall be construed to render any agent of such owner liable to be assessed or taxed for such property; but every such agent shall be entitled to have any such property deducted from his assessment, upon making affidavit, before the assessors at the time appointed by them for renewing their assessments, that such property belongs to a non-resident owner, and therein specifying his name and residence.

Remedy by Tenant for Taxes Paid.

§ 4. When the tax on any real estate shall have been collected of any occupant or tenant, and any other person, by agreement, or otherwise, ought to pay such tax, or any part thereof, such occupant, or tenant, shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due, or accruing from him to such person, for the land so taxed.

Losses by Collector or County Treasurer.

§ 5. All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by the default of the treasurer of any county, in the discharge of the duties imposed by this Chapter, shall be chargeable on such county. And the several boards of supervisors shall add such losses, to the next year's taxes of such town or county.

Cancellation of Erroneous Charge for United States Direct Tax.

§ 6. Whenever it shall appear to the comptroller, that any charge of arrears of the direct tax of the United States, returned to his office as unpaid, has been paid to any of the collectors of that tax, or that the same lands have been

twice charged with the same tax, he shall cancel the erroneous charge on the books of his office.

Comptroller May Require Corrected Returns of Non-resident Lands.

§ 7. If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received, he may give notice of such apprehension to the board of supervisors of the proper county, at their annual meeting, specifying the several towns in such county, the returns from which will probably require correction.

Duty of Supervisors Thereupon.

[420] § 8. It shall be the duty of such board of supervisors to require the assessors and the collector of such town, specified in the notice of the comptroller, to meet in such town at such place as shall be designated by the supervisors, within thirty days of the expiration of the time, when the collectors are to make their returns to the county treasurers.

Duty of Assessors and Collectors.

§ 9. It shall be the duty of the assessors and collectors to meet pursuant to such requisition. The collectors shall specify to the assessors, the several lots to be returned as non-resident property, by reason of the non-payment of the taxes; and the assessors shall arrange the same according to the provisions of this Chapter, and shall examine the descriptions of the lots; and in case any of them are found erroneous or imperfect, they shall correct the same, conformable to such instructions as may have been received from the comptroller, and the collector shall thereupon return the lots as arranged and described by the assessors, to the county treasurer.

Comptroller's Certificate or Deed.

§ 10. Every certificate or conveyance executed by the comptroller in pursuance of the provisions of this Chapter, may be recorded in the same manner, and with the like effect, as a deed regularly acknowledged or proved, before any officer authorized by law, to take the proof and acknowledgment of deeds.

Sales for Taxes for Opening Roads.

§ 11. All sales of lands charged with taxes in arrear for opening and improving roads within this state, shall be conducted in the manner hereinbefore prescribed; and the owners of the lands sold, shall be allowed to redeem within the same time, and on the same conditions.

Comptroller to Issue Blank Forms and Instructions.

§ 12. The comptroller shall, from time to time, at his discretion, transmit blank forms of assessment-rolls, and of returns of unpaid taxes, to the several county treasurers in this state; together with such instructions as he shall think useful, for the purpose of enforcing the uniform and proper execution of this Chapter.

Distribution of Forms and Instructions.

§ 13. The county treasurers shall distribute such of the said forms and instructions, as shall have been intended for the use of assessors, among the town clerks, in their respective counties, who shall deliver the same to the assessors in their respective towns. The county treasurer shall also transmit or deliver a copy of such forms and instructions to each of the assessors in any city in his county.

Copies of this Chapter to be Distributed.

§ 14. The comptroller shall, from time to time, whenever he shall find it to be necessary, cause to be printed, at the expense of this state, a sufficient number of copies

of this Chapter, to furnish one copy to each county treasurer, supervisor, town clerk, assessor and collector within this state; and shall transmit to each county treasurer a
[421] sufficient number for his county. Every county treasurer receiving such copies, shall immediately transmit, at the expense of the county, to the clerk of each town therein, five copies, to be distributed by him among the officers entitled thereto; and he shall also transmit or deliver one such copy to each assessor and collector, in every city in his county.

Punishment for Neglect of Duty.

§ 15. If any of the officers concerned in the execution of this Chapter, shall willfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

Title VI.

SPECIAL AND LOCAL PROVISIONS.

(This Title is omitted as not relating to Franklin County.)

LAWS OF 1851, CHAPTER 176.

AN ACT to amend the law for the assessment and collection of taxes.

SECTION 1. Section two, article one, title two, chapter thirteen, part first of the Revised Statutes in relation to the assessment and collection of taxes, is hereby amended so as to read as follows: "Land occupied by a person other than the owner, may be assessed to the owner or occupant, or as non-resident lands."

SEC. 2. Section five of the same title is hereby amended so as to read as follows: "Every person shall be asessed in the town or ward where he resides when the assessment

is made, for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case shall property so held under either of these trusts, be assessed against any other person, and in case any person possessed of such personal estate shall reside during any year in which taxes may be levied, in two or more counties, towns or wards, his residence for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted, but the products of any state of the United States, consigned to agents in any town or ward of this state, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents of moneyed corporations or capitalists be liable to taxation under this section, for any moneys in their possession or under their control transmitted to them for the purposes of investment or otherwise."

Sec. 3. Sections fifteen, sixteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six of the same title are hereby repealed, and section seventeen of the same title is hereby amended so as to read as follows: "All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

Sec. 4. Section twenty of the same title is hereby amended so as to read as follows: Such notices shall set forth that the assessors have completed their assessment-roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it

shall be the duty of the said assessors on such day to meet at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered, and it shall be their duty to adjourn from time to time, as may be necessary, to hear and determine such complaints; but in the several cities of this state, the notices, required by this section, may conform to the requirements of the respective laws regulating the time place and manner for revising the assessments in said cities, in all cases where a different time, place, and manner is prescribed by said laws from that mentioned in this act.

Penalty for Neglect.

§ 5. If the assessors shall willfully neglect to hold the meeting specified in the last preceding section,* each assessor so neglecting shall be liable to a penalty of twenty dollars, to be sued for and recovered before any court having jurisdiction thereof, by the supervisor of the town, for the use of the poor of the same town; and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to the board of supervisors, at their next meeting, who shall have power to review and correct such assessment.

Reduction of Valuation.

§ 6. Whenever any person on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in the assessment-roll, it shall be the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate; and after such examination, and such other supplementary evidence, under oath, as shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just, under

[* Section 20, part 1, ch. 13, tit. 2, R. S.]

the rule prescribed by section* of this title; but if such person shall refuse to answer any question as to the value of his real or personal estate, or the amount thereof, or present sufficient supplementary evidence, under oath, to justify a reduction, the said assessors shall not reduce the value of such real or personal estate. The examination so taken shall be written, and shall be subscribed by the person examined, and shall be filed in the office of the town clerk of the town or city in which such assessment shall be made; and any person who shall willfully swear false on such examination before the assessors, shall be deemed guilty of willful and corrupt perjury. It shall also be the duty of the assessors, whenever the valuation fixed to* them, after such examination, shall exceed that sworn to by the aggrieved party or person, to indorse on the written examination, the words, "disagreed to by the undersigned assessors, under the rule prescribed for making assessments, by section fifteen, article two, title two, chapter thirteen, part one of the revised statutes, and in view of the obligations imposed by the deposition and oath, subscribed and made on the completion of the assessment-roll, to which this disagreement refers." It shall be the duty of the assessors on the same occasion, to furnish the aggrieved party or person a duplicate copy of the before mentioned written examination, together with the indorsement of disagreement aforesaid, duly signed.

Assessors May Administer Oaths.

§ 7. The assessors of the several towns and wards of this state, shall have power to administer oaths to any person applying to them under the provisions of the sixth section of this act.

Assessment-Roll, Form of Oath To.

§ 8. When the assessors or a majority of them, shall have completed their roll, they shall severally appear be-

[* So in original. As amended by L. 1857, ch. 536.]

fore one of the justices of the town or city in which they shall reside, and shall severally make and subscribe before such justice, an oath, in the following form: We, the undersigned, do severally depose and swear that we have set down, in the foregoing assessment-roll, all the real estate situated in the (town or ward as the case may be), according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor; and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief. Which oath shall be written on said roll, signed by the assessors, and certified by the justice, and shall be in place of the official certificate now required by law; and every assessor who shall willfully swear false in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties, of willful and corrupt perjury.

LAWS 1855, CHAP. 427.

AN ACT in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes.

Title I.

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURER, AND THE DUTY OF THE COMPTROLLER AND OTHER OFFICERS THEREUPON.

Treasurer to Pay County Debts.

§ 1. The treasurer of each county shall pay to the creditors of his county, from the moneys paid to him by the collectors, such sums, and in such manner as the board of supervisors shall have directed.

State Tax, When to be Paid.

§ 2. The several county treasurers shall, on or before the first day of March in each year, pay to the treasurer of this state, the amount of the state tax, if any, raised and paid over to them respectively, retaining the compensation to which they may be entitled.

How Paid.

§ 3. Such payment may also be made by depositing such money, to the credit of the treasurer of this state, in such banks in the cities of New York or Albany as shall have been designated by the comptroller, and shall then be entitled to receive the state deposits, and in case of such payment to either of those banks, the county treasurer making it, shall forthwith transmit a certificate of deposit to the comptroller, who shall thereupon certify such payment to the state treasurer, and charge him with the amount thereof.

Certificate of Unpaid Taxes.

§ 4. Whenever any county treasurer shall receive from a collector an account of unpaid taxes assessed on lands of non-residents, such county treasurer shall compare the same with the original assessment-roll, which original rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof, he shall add to it a certificate showing that he has examined and compared the account with the assessment-roll, and found the same to be correct; and after crediting the collector with the amount, shall, before the first day of April next ensuing, transmit the account and collector's affidavit, to the comptroller, with a certificate that he has compared the account with the entries of the same taxes, in the original assessment roll, and has found the same to be a true transcript of such roll.

Tax on Land Vacant by Removal of Occupant.

§ 5. If the taxes on any farm or lot of land, assessed to a resident, shall be returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant, before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, the supervisor of the town in which such land was assessed, shall add a description thereof to the assessment-roll of the next year in the part thereof appropriated to taxes on lands of non-residents, and shall charge the same with the uncollected tax of the preceding year; and the same proceedings shall be had thereon, in all respects, as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added.

Non-resident Lands.

§ 6. Whenever the taxes upon the lands of a resident shall be returned for non-payment, as provided in the last preceding section, to the county treasurer, the collector shall annex to such return an affidavit, stating the reasons why such tax was not collected. Nothing in said last preceding section shall be so construed as to conflict with sections one, two and three of chapter four hundred and sixty-one, laws of eighteen hundred and thirty-six, but they shall be concurrent remedies.

Tax may be Paid to County Treasurer.

§ 7. Any person whose lands are assessed, may pay the tax assessed thereon to the treasurer of the county in which such lands were assessed, provided such payment be made to the county treasurer before he shall have made his annual return of the arrears of taxes to the comptroller. The county treasurer shall give a receipt for such payment, and shall also make return thereof to the comptroller.

Apportionment of State Tax.

§ 8. The comptroller shall, from the annual returns made to him of the valuations of real and personal estates in the several counties in this state, charge the several county treasurers with the amount of the state taxes, if any, to be raised in their respective counties, crediting them with their own fees; but no fees shall be allowed by the comptroller to the county treasurers, in adjusting the accounts of the county treasurers, for such portion of the state tax as is paid by credit given for taxes on non-resident property returned to him.

Lands Imperfectly Described.

§ 9. Whenever any account of arrears of taxes on the lands of non-residents shall be transmitted by a county treasurer to the comptroller, he shall examine them, and

reject all taxes that shall be found to be charged on lands imperfectly described, and credit such county treasurer, in a book to be kept by the comptroller for that purpose, with the amount of all arrears of taxes which shall be admitted by him.

[Amended by L. 1878, ch. 152; page 66 *infra*.]

Arrears, how Adjusted with County.

§ 10. If the arrears so credited to the treasurer of any county shall exceed the state tax, if any, in said county, the comptroller shall cause the surplus, after deducting therefrom any balance which may be due from such county on account of taxes previously rejected by the comptroller, to be paid out of the treasury of this state, to the treasurer of the county; and the whole amount of taxes so to be assumed by the state, shall be collected for its benefit, in the manner hereinafter provided. If there be no state tax, the whole amount of such arrears, after deducting such balance as above mentioned, shall be paid to the county treasurer.

Accounts with County Treasurer.

§ 11. The comptroller shall state the accounts of the several county treasurers, on the first day of May in every year; and whenever any part of a state tax shall appear to be unpaid by any county treasurer, the comptroller shall transmit by mail to such county treasurer a copy of his account, requiring him to pay the balance within thirty days.

Proceedings on Failure of County Treasurer to Settle.

§ 12. If any county treasurer shall refuse or neglect to pay such balance within such time, the comptroller shall forthwith, (unless he shall be satisfied by due proof that such treasurer has not received such balance, and has taken all proper steps to collect the same,) deliver a copy of such

county treasurer's account to the attorney-general, who shall prosecute forthwith; and the state shall be entitled to recover the balance due, with interest thereon, from the first day of May, in the year when the same ought to have been paid.

Treasurer's Bond to be Sued.

§ 13. The comptroller may also, in his discretion, direct the board of supervisors of the proper county, to institute one or more suits on the bond of such treasurer and his sureties.

When Suits to be Discontinued.

§ 14. If the defendants in any suits to be brought under either of the last two preceding sections, shall at any time before judgment is obtained therein, pay the balance due the state, with interest, into the treasury, or account for the same to the comptroller, it shall be his duty, on payment of costs of suit, to direct such suits to be discontinued.

Statement of Arrears.

§ 15. It shall be the duty of the comptroller, on or before the first Tuesday in October, in every year, to furnish the boards of supervisors of the several counties, from which returns of arrears of taxes shall have been received at his office, with statements of the sums paid out of the state treasury, to their respective county treasurers, on account of such arrears during the year preceding.

Rejected Taxes, Statement of.

§ 16. The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise, to each county treasurer, a transcript of the taxes of the preceding year, assessed in any town of such county, which shall have been rejected by him, for any cause whatever, stating therein the cause of such rejection.

[Amended by L. 1878, ch. 152; page 67 *infra*.]

Taxes on Lands Imperfectly Described.

§ 17. Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office have been assessed on lands so imperfectly described, that the same can not, in his opinion, be located with certainty, he shall charge such taxes to the treasurer of the county in which such lands shall be, with the interest thereon, from the first day of March, in the year following that in which the taxes were laid, to the first day of February next after the discovery of such imperfect description.

[Amended by L. 1878, chap. 152; page 67 *infra*.]

Transcript to be Delivered to Supervisors.

§ 18. The comptroller shall also transmit, by mail, a transcript of the returns of such taxes, with the addition of such interest, to the proper county treasurer, who shall deliver the same to the supervisor of the town upon which such taxes are to be assessed, by whom it shall be delivered to the board of supervisors, at their next meeting. If the town upon which such taxes were originally assessed, shall have been divided since such assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

[Amended by L. 1878, ch. 152; page 67 *infra*.]

Description of Lands to be Made.

§ 19. Whenever the comptroller shall have rejected any tax, in the first instance, or have charged the same to a county, to which it shall have been credited, on account of any inaccurate or imperfect description of the lands on which such tax was laid, the supervisor of the town in which such lands are situate, shall, if in his power, add to the next assessment-roll of such town an accurate description of such lands; and if necessary, may cause the survey of such lands at the expense of the town; and the board of supervisors shall charge them with the taxes

and interest in arrears, stating the tax of each year separately, and shall direct the collection thereof; and such taxes and interest shall, for all the purposes of this act, be considered as the taxes of the year in which the description shall be perfected.

[Amended by L. 1878, ch. 152; page 68 *infra*.]

If not Made, Tax Assessed on Town.

§ 20. If an accurate description of such lands shall not have been added by such supervisor to the assessment-roll of his town, the board of supervisors shall cause such arrears of taxes, and the interest thereon, to be levied on the valuations of the estates, real and personal, of such town, as appearing by such assessment-roll, and shall direct the same to be collected with the other taxes of the same year.

[Amended by L. 1878, ch. 152; page 68 *infra*.]

How Assessed in Case of Division of Town.

§ 21. If the town in which such taxes were originally assessed, shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns included in the limits of such original towns, in such equitable manner as they may deem proper.

[Amended by L. 1878, ch. 152; page 69 *infra*.]

Tax, when Canceled.

§ 22. Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was, previously to such return, paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall have been also paid into the state treasury, he shall cause it to be repaid out of the treasury, to the person by whom such payment shall have been made.

[Amended by L. 1885, ch. 453; page 81 *infra*.]

Account to be Transmitted to Supervisors.

§ 23. Whenever any tax shall be so canceled by the comptroller, he shall transmit an account thereof to the treasurer of the proper county, who shall cause the same to be laid before the board of supervisors thereof, and the amount of such tax with the interest shall be collected by them of the collector or county treasurer, who made such erroneous returns, and be paid into the treasury of this state.

Overpaid Taxes.

§ 24. Whenever it shall appear satisfactorily to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the treasury of this state, on account of such tax; and in cases where it shall appear that the amount due for any tax has been overpaid, he may draw his warrant on the treasurer for the amount so overpaid, in favor of the person who may have made such payment.

Losses by Default.

§ 25. All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by the default of the treasurer of any county in the discharge of the duties imposed by this act, shall be chargeable to such county. And the several boards of supervisors shall add such losses to the next year's taxes of such town or county.

Interest on Unpaid Taxes.

§ 26. If any tax charged on lands of non-residents, or lands returned as under section five of this act, shall remain unpaid until the first day of August following the year in which they shall have been assessed, they shall thereafter be subject to a yearly interest, at the rate of ten

per cent., until the same shall be duly paid or the lands sold, as hereinafter provided.

Certificate of Taxes Due.

§ 27. The comptroller shall, from time to time, give to any person requiring the same, a certificate of the amount of any tax, interest and charges, due on any tract, piece or parcel of land; and the state treasurer may receive such tax, interest and charges, and give a receipt therefor upon such certificate, which shall be countersigned by the comptroller, and entered in the books of his office.

[Amended by L. 1878, ch. 152; page 69 *infra*.]

Persons may Pay Tax for their Interest in Lands.

§ 28. Whenever a sum in gross is assessed upon any tract, piece or lot of land, any person claiming a divided or undivided part thereof, may pay to the treasurer of the state any part of the tax, interest, and charges due thereon, proportionate to the number of acres claimed by him, on the certificate of the comptroller; and the remaining tax, interest and charges shall be a lien on the residue of the land only.

Map of Subdivisions.

§ 29. If the tract be subdivided, the person wishing to pay the tax upon a divided part of it, shall deliver to the comptroller a map of the subdivisions, if required by him.

Taxes, how Paid: Overcharges.

§ 30. Any person may pay the tax for any one year, and the interest and charges thereon, on any tract or lot of land, without paying the tax of any other year; and in case any tract or lot of land shall have been returned as containing a greater quantity of land than it shall actually contain, the amount overcharged shall be deducted, or if the tax shall have been paid according to such return, shall be re-

funded out of the treasury, on satisfactory proof being produced to the comptroller of the quantity actually contained in such tract or lot, at any time before the sale of such lands; but no such overcharge shall be cancelled, nor shall such over-payments be refunded unless application shall be made to the comptroller therefor within six years after the assessment of such overcharge.

Overcharges to be Recharged to County.

§ 31. If the whole amount of the tax, in case of the such overcharge, shall have been paid to the county treasurer, out of the treasury of this state, the comptroller shall charge the amount so refunded, with interest and charges thereon, to the treasurer of the county from which the tax was returned, and shall transmit an account thereof to him.

Town to be Liable Therefor.

§ 32. Such county treasurer shall deliver such account to the board of supervisors, at their then next meeting, who shall cause the amount thereof to be added to the proportion of the charges of the county to be raised in the town in which the tax was laid.

Title II.

Of Sales for Unpaid Taxes, and the Conveyance and Redemption of Land Sold, etc.

When Land to be Sold.

§ 33. Whenever any tax charged on lands returned to the comptroller, and the interest thereon, shall remain unpaid for two years from the first day of May following the year in which the same was assessed, the comptroller shall proceed to advertise and sell such land in the manner hereinafter provided.

[Amended by L. 1878, ch. 152; page 69 *infra*.]

List of Lands and Notice of Sale.

§ 34. He shall make out a list or statement of the lands charged with such tax and interest, and so liable to be sold; and shall cause so many copies thereof to be printed, as shall be sufficient to furnish each county treasurer with at least five copies, and each town clerk with at least two copies, and shall transmit to each county treasurer such number of said copies as shall be equal to five copies for such county treasurer, and two copies for each town clerk in his county. And the comptroller shall also make and transmit to the county treasurer of each county, a list or statement of all the lands in such county charged with such tax and interest, who, in addition to publication in the state paper, shall cause the same to be correctly published and printed in each of the papers in his county designated by the board of supervisors for publishing the session laws, for the space of ten weeks prior to the commencement of such sale. If no newspaper shall have been designated to print the laws in any county, such list or statement shall be published in two newspapers of such county to be selected by the county treasurer; and if there shall not be two newspapers published in such county, then in two papers which the county treasurer shall ascertain to be most generally circulated in such county. But no error in the printed description in such newspapers shall vitiate or in any manner affect the validity of such sale; and all expenses of printing such list or statement shall be audited by the comptroller and paid out of the treasury of this state, on receiving one copy of the newspaper containing the same, with an affidavit of the publication of such list or statement according to the provisions of this section, to be made by the printer, publisher, or some person to whom the fact of such publication shall be known.

[Amended by L. 1878, ch. 152; page 69, *infra*.]

List, how Transmitted.

§ 35. The comptroller may employ agents or messengers to transmit to such of the county treasurers as he may think proper, the copies of such lists of lands liable to be sold for taxes; and the agents or messengers so employed shall require of each county treasurer to whom they shall deliver such copies, an acknowledgment, in writing, of the receipt thereof; which acknowledgments shall be delivered by such agents or messengers to the comptroller, at least eighteen weeks before the commencement of the sale of the lands mentioned in such lists.

Compensation of Agents.

§ 36. The reasonable compensation of such agents or messengers shall be fixed by the comptroller, and paid out of the treasury; but the same shall not, in any case, exceed the amount of postage which would have been charged on the copies transmitted by such agents or messengers, if they had been transmitted by mail.

Expenses, how Charged.

§ 37. The expenses incurred by the state in printing and transmitting any list of lands liable to be sold for taxes, and in publishing notices of sale, shall be charged on the lands mentioned in said list, and shall be apportioned among the several tracts or parcels of such land, in such proportions as the Comptroller shall deem just.

[Amended by L. 1878, ch. 152; page 70, *infra*.]

Copies in County Treasurer's Office.

§ 38. The county treasurers shall retain in their offices five of the copies transmitted to them, and shall permit all persons, at all reasonable hours, to examine the same; and shall cause the remaining copies to be delivered to the town clerks.

[Amended by L. 1878, ch. 152; page 71, *infra*.]

County Treasurer's Expenses.

§ 39. The expenses which may be incurred by the county treasurer, in the transmission of such lists, shall be audited and paid as contingent expenses of the county.

Notice by Town Clerks.

§ 40. Every town clerk to whom such copies shall be delivered, shall give notice at the opening of every town meeting for the election of town officers, that lists of all lands advertised for sale for taxes by the comptroller, are deposited in his office, and that they may be there seen and examined, at all reasonable hours, free of expense.

General Notice to be Published.

§ 41. After transmitting such lists to the county treasurers, the comptroller shall cause to be published, once in each week, for twelve weeks successively, in all the newspapers in this state, designated by the board of supervisors of the several counties for printing the laws, under the provisions of the act, entitled "An act for the publication of the session laws in two newspapers in each county in this state," passed May fourteenth, one thousand eight hundred and forty-five, a general notice, stating that a list of all the lands liable to be sold for taxes has been forwarded to each of the county treasurers and town clerks in this state, and that so much of the said lands as may be necessary to discharge the taxes, interest, and charges which may be due thereon at the time of sale, will, on the day to be mentioned in such notice, and the succeeding days, be sold at public auction at the capitol in the City of Albany.

[Amended by L. 1878, ch. 152; page 71, *infra*.]

Affidavit of Publication.

§ 42. Every printer to whom such notice shall be transmitted for publication, shall, within twenty days after the last publication thereof, transmit to the comptroller an af-

fidavit of due publication, made by some person to whom the fact of publication shall be known.

Maps of Lands Sold.

§ 43. Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary, in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county, for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made, shall furnish such maps, at the expense of the county, if they can be procured, and if not, they shall then furnish such descriptions of the lands as they can obtain, with a statement of the quantity in each subdivision, if the same be divided.

[Amended by L. 1881, ch. 402 ; page 72, *infra*.]

Sale by Comptroller.

§ 44. On the day mentioned in the notices, the comptroller shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel so assessed, shall be sold, as will be sufficient to pay the taxes, interest and charges thereon.

[Amended by L. 1881, ch. 402 ; page 73, *infra*.]

Payment by Purchaser : Default.

§ 45. The purchasers at such sale shall pay the amount of their respective bids to the state treasurer, within forty-eight hours after the last day of the sale ; and if any such purchaser shall refuse or neglect to pay the same within that time, the comptroller may state an account against him, and deliver it to the attorney-general, who shall be entitled to recover the same from the purchaser, by an action in the name of the people of this state ; and for that purpose he shall forthwith cause a suit to be instituted therefor ; or the comptroller may, in his discretion, re-sell the said lands upon which such bids so remaining unpaid were made, as hereinafter provided.

Certificate of Purchase.

§ 46. After such payment shall have been made, the comptroller shall give to the purchaser of any such lands a certificate in writing, describing the lands purchased, the sum paid, and the time when the purchaser will be entitled to a deed.

Cancellation of Sale for Non-payment.

§ 47. At any time after the expiration of three months from the conclusion of any sale of lands for taxes, pursuant to this act, when any purchaser at such sale shall not have paid the amount of his bid, or the same shall not have been collected from him, it shall be lawful for the comptroller to cancel such sale, by which all the rights of the said purchaser under such bid shall be extinguished.

New Certificate May be Issued.

§ 48. When the comptroller shall have cancelled any sale in the manner above provided, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable by the original purchaser, in case the said sale had not been cancelled, or if such certificate cannot be sold, he may transfer the same to the people of the state.

[Amended by L. 1878, ch. 152 and L. 1881, ch. 402 ; pages 71 and 74 *infra*.]

Rights of New Purchaser.

§ 49. The change of purchaser shall be noted in the sales book, and the time when made ; and the certificate issued to such new purchaser, shall confer the same right to him and his legal representatives, as he would have acquired had he been the successful bidder at the sale.

Time for Redemption.

§ 50. The owner or occupant of any land sold for taxes, or any other person, may redeem the same, as

hereinafter provided, at any time within two years after the last day of such sale, by paying to the state treasurer, on the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate of ten per cent. per annum, from the date of such certificate.

[Amended by L. 1881, ch. 402; page 75, *infra*.]

Redemption of Undivided Parts.

§ 51. Any person claiming an undivided part of any tract, lot or piece of land sold for taxes, may redeem the same on paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

Undivided Share of Undivided Parts.

§ 52. Any person claiming an undivided share in any tract or lot of land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

Redemption of Specific Parts.

§ 53. Any person claiming a specific part of any tract, lot or piece of land sold for taxes, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold.

Specific Parts of Undivided Tract.

§ 54. Any person claiming a specific part of any tract or lot of land out of which an undivided part shall have been sold for taxes, charged on the whole tract or lot, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity taxed.

Proportional Parts: Effect of Payment For.

§ 55. Any person claiming a specific part of any tract or lot of land out of which a specific part belonging to some other person, shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying as aforesaid, at any time before the expiration of the time allowed for the redemption, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity taxed; and such payment shall operate as redemption of a proportionate part, according to the amount paid, of the land sold.

Partial Redemptions.

§ 56. In every case of a partial redemption, pursuant to either of the last five sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption; and the comptroller shall convey accordingly.

Taxes on Lands Conjointly Sold.

§ 57. Whenever the lands of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion under section fifty-two of this act, the person whose lands shall be sold may redeem the same on paying, as aforesaid, the purchase money and interest; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption moneys so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportion, until after the expiration of the time allowed for redemption.

Suits for Proportion of Value.

§ 58. If such owner shall not redeem the land sold, and the same shall be conveyed by the comptroller, such owner

may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest and charges for which the land shall have been sold. In all actions under this or the last preceding section, the certificate of the state treasurer, countersigned by the comptroller, duly stating the facts in relation to such redemption or sale and conveyance, shall be presumptive evidence of such payment, and of all facts therein stated.

Lien of Judgment.

§ 59. Every judgment obtained under either of the last two sections, shall have priority, as against the lands of the defendant therein, on which the tax was assessed, and for which such proportional part ought to have been paid, to all mortgages executed, and all judgments recovered, since the twenty-third day of April, eighteen hundred and twenty-three.

Docket, how Made.

§ 60. But such judgment shall not be entitled to such priority, unless at the time of docketing the same the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority, as a lien on certain lands, over mortgages and other judgments pursuant to the laws regulating the collection of taxes, which entry shall be a part of such docket.

Notice of Unredeemed Lands.

§ 61. The comptroller shall, at least six months before the expiration of the two years allowed for redemption, prepare a notice for each county, in which there shall then appear to be any lands sold for taxes and unredeemed, specifying particularly every parcel remaining unredeemed, and the amount necessary to redeem the same, calculated to the last day on which such redemption can be made, and stating that unless such lands are

redeemed by a certain day, they will be conveyed to the purchaser; and he shall cause such notice to be published once in each week, for at least six weeks successively, in the newspapers designated by the boards of supervisors of such counties respectively to publish the session laws; such publication to be in the body of the newspaper, and not in a supplement; and the said six weeks' publication to be completed at least eighteen weeks before the expiration of the two years allowed for the redemption. The boards of supervisors of the respective counties shall audit and pay the expenses of such publication.

Where no Newspapers Designated.

§ 62. If no newspapers shall have been designated to print the laws in any county in which such lands are situated, such notices, and lists or statements, shall be transmitted and published, as above provided, in two newspapers of such county, to be selected by the comptroller; and if there shall not be two newspapers published in such county, then in the two newspapers which the comptroller shall believe to be most generally circulated in such county.

Deeds to be Executed of Lands Unredeemed.

§ 63. If no person shall redeem such lands within such two years, the comptroller shall, at the expiration thereof, execute to the purchaser, his heirs or assigns, in the name of the people of this state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple; subject, however, to all the claims which the people of this state may have thereon for taxes, or other liens or incumbrances.

Lost Certificate.

§ 64. Whenever any certificate, given by the comptroller for lands sold for taxes, shall be lost, or wrongfully with-

held by any person from the owner thereof, the comptroller may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may execute and deliver a deed to such person, as may appear to him to be the rightful owner of the land described in the certificate.

Conveyances, how Executed: Effect Of.

§ 65. Such conveyance, shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the deputy comptroller, surveyor general or treasurer, and all conveyances hereafter executed by the comptroller, of lands sold by him for taxes, shall be presumptive evidence that the sale, and all proceedings prior thereto, from and including the assessment of the land, and all notices required by law to be given previous to the expiration of the two years allowed to redeem, were regular, according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto.

[Amended by L. 1860, ch. 209 and L. 1885, ch. 448; pages 61 and 78, *infra*.]

Bids for the State.

§ 66. It shall be the duty of the comptroller to bid in for the state, at any sale of land for taxes, every lot of land by him put up for which no person shall offer to bid; and certificates of such sale shall be made by the comptroller, which shall describe the lands purchased, and specify the time when the people of this state will be entitled to a deed. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands sold shall not be redeemed, the comptroller, shall execute a release therefor, to the people of this state, or their assignees, which shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals.

[Amended by L. 1881, ch. 402; page 76, *infra*.]

Sale of Lands Bid in by the Comptroller.

§ 67. At any time before the expiration of the two years allowed to redeem, the comptroller may sell and assign all the interest of the people of this state, in any or all such certificates as mentioned in the last preceding section, either at public or private sale, as to him may seem most for the interest of the people, to any person who shall forthwith pay into the state treasury the amount of the purchase money charged him by the comptroller; and the assignee of such certificate, if the lands therein described shall not be redeemed, shall be entitled to a deed therefor, which shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of conveyances under the last preceding section.

Notice to Occupants.

§ 68. Whenever any lot or separate tract of land sold for taxes by the comptroller, and conveyed as hereinbefore provided, shall, at the time of the expiration of the two years given for the redemption thereof, or any part thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall serve a written notice on the person occupying such land, within two years from the expiration of said time to redeem; stating in substance the sale and conveyance, the person to whom made, and the amount of the consideration money mentioned in the conveyance, with the addition of thirty-seven and a half per cent. on such amount, and further addition of the sum paid for the deed; and stating also, that unless such consideration money and the said thirty-seven and a half per cent., together with the sum paid for the deed, shall be paid into the treasury for the benefit of such grantee, within six months after the time of filing in the comptroller's office of the evidence of the service of the said notice, that the said conveyance will become absolute, and the occupant

and all others interested in the land, be forever barred from all right or title thereto. And no conveyance made in pursuance of this section shall be recorded, until the expiration of such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

Notice, how Served.

§ 69. Such notice may be served personally, or by leaving the same at the dwelling-house of the occupant, with any person of suitable age and discretion, belonging to his family.

Redemption by Occupant.

§ 70. The occupant, or any other person, may, at any time within the six months mentioned in such notice, redeem the said land, by paying into the treasury, such consideration money, with the addition of thirty-seven and a half per cent. thereon, and the amount that shall have been paid for the deed; and every such redemption shall be as effectual as if made before the expiration of the two years allowed to redeem the land sold.

Certificate of Redemption.

§ 71. Upon such redemption, as provided for in the last preceding section, the comptroller shall give to the person redeeming, a certificate under his hand and seal, stating the payment, the year in which the sale was made, and showing particularly what land such payment is intended to redeem; and such certificate shall be evidence of such redemption, and may be recorded by the clerk of the county, in the book for the recording of deeds.

Affidavit of Service of Notice.

§ 72. In every case of actual occupancy, the grantee, or the person claiming under him, in order to complete his title to the land conveyed, shall within one month after the service of such notice, file with the comptroller a copy of

the notice served, together with the affidavit of some person who shall be certified as credible, by the officer before whom such affidavit shall be taken, that such notice as is above required, was duly served, specifying the mode of service.

Comptroller's Certificate of Facts.

§ 73. If the comptroller shall be satisfied by such copy and affidavit that the proper notice has been duly served, and if the moneys required to be paid for the redemption of such land shall not have been paid, as hereinbefore provided, he shall, under his hand and seal, certify such facts, and the conveyance before made shall thereupon become absolute; and the occupant, and all others interested in said lands shall be forever barred of all right and title thereto.

Occupant May Redeem.

§ 74. The occupant of any such lot, or any other person may at any time before the service of said notice by the purchaser, or the person claiming under him, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and a half per cent thereon together with the sum paid for the deed, if any.

[Amended by L. 1885, ch. 453 and by L. 1890, ch. 556; pages 83 and 84, *infra*.]

Treasurer's Receipt, Comptroller's Certificate to be Evidence.

§ 75. Upon redemption being made, as permitted in the last preceding section, the receipt of the treasurer to whom the payment is made, accompanied by the comptroller's certificate, as required by section sixty-eight of this act, and further stating, that such redemption was made without notice, shall be presumptive evidence that such land has been correctly redeemed.

Effect of Sale on Mortgage Lien.

§ 76. No sale of real estate hereafter made for the non-payment of any tax or assessment, shall destroy, or in any manner affect the lien of any mortgage thereon, duly recorded or registered at the time of such sale, except as hereinafter provided.

Notice to Mortgagee.

§ 77. It shall be the duty of the purchaser at such sale, to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with interest, at the rate allowed by law thereon, within six months after the giving of such notice.

[Amended by L. 1870, ch. 280; page 64, *infra.*]

Mortgagee's Lien.

§ 78. If such payment shall be made, the sale shall be of no further effect, and the mortgagee shall have a lien on the premises for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per cent per annum, in like manner as if the same had been included in his mortgage.

Failure to Pay.

§ 79. In case the mortgagee shall fail to make such payment within the time so limited, he shall not be entitled to the benefit of section seventy-six of this act.

Mortgagee and Purchaser Defined.

§ 80. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser," shall be construed to include assignees, and real or personal representatives, as the case may be.

Notices, how Served.

§ 81. The notice required by section seventy-seven of this act, may be given either personally or in the manner required by law, in respect to notices of non-acceptance or non-payment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as is by law prescribed in respect to deeds or other evidences of title of real estate.

[Amended by L. 1870, ch. 280; page 65, *infra*.]

Notices, to Whom Directed.

§ 82. The notice required to be given under the last preceding five sections, in cases of sales by the comptroller, shall be directed only to such persons as shall within two years from the time of such sale file in the office of the comptroller, a notice stating the name of the mortgagor and mortgagee, the date of the mortgage, and the amount claimed to be due thereon, and the county, town and tract in which the mortgaged premises are situated, with the number of the lot on which said mortgage is claimed to be a lien, with the name of the person or persons claiming notice, their residence, and the post-office to which such notice shall be addressed; in case such mortgagee or other person shall omit or neglect to file such notice with the comptroller within the said two years, then said mortgagee or other person shall be barred from all claim to redemption by virtue of said mortgage, and the title of the purchaser shall become valid and effectual the same as if such mortgage had not existed.

Invalid Sales.

§ 83. Whenever the comptroller shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever invalid or ineffectual to give title to the lands sold, the lands so improperly sold shall not be

conveyed, but the comptroller shall cancel the sale, and forthwith cause the purchase money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns.

Error, how Charged.

§ 84. If the error originated with the county or town officers, the sum so paid shall be a charge against the county from which the tax was returned; and the board of supervisers shall cause the same to be assessed, levied, collected, and paid to the treasurer of this state.

Cancelling Sale and Refunding Money.

§ 85. If the discovery that the sale was invalid shall not be made until after the conveyance shall have been executed for the lands sold, it shall be the duty of the Comptroller, on receiving evidence thereof, to cancel the sale, to refund out of the state treasury to the purchaser, his representatives or assigns, the purchase money, and interest thereon, and to recharge the county from which the tax was returned, with the amount of purchase money, and interest at the rate of seven per cent from the time of the sale, and such county shall cause the same to be levied and paid, as provided in the last preceding section.

Expenses of Sale to be Apportioned.

§ 86. The expenses attending the sales for taxes out of this act, including a due proportion of the expenses of publishing lists and notices and transmitting copies thereof, and not hereinbefore provided for, shall be a charge on the lands out of which the sales are made; and an equal part of such expense shall be added to the taxes, interest, and other charges, on each parcel of land out of which a sale may be made.

[Amended by L. 1878, ch. 152; page 72, *infra*.]

Moneys to be paid into Treasury.

§ 87. The moneys received upon every such sale for taxes and interest, and also for the expenses of sale, shall be paid into the state treasury, and the accounts of persons entitled to any portion of the moneys so received, for such expenses, shall be audited by the comptroller, and paid out of the state treasury.

Neglect of Duty.

§ 88. If any of the officers concerned in the execution of this act, shall willfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court.

Pay of County Treasurers.

§ 89. The county treasurers of the several counties of this state, shall not, after the thirty-first day of May next, receive any moneys in payment of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, but they shall forthwith transmit to the state treasurer all money received by them in payment of such taxes, and the interest thereon up to that time, and shall at the same time furnish the Comptroller with a full account of the same, exhibiting the lots, tracts, pieces, or parcels of land, particularly describing each as described in the books of his office, upon which such taxes were paid; the amount paid upon each, and the year for which such tax was paid; and if any part of such money shall have been paid on parts of lots or tracts, upon certificates made by the comptroller, the description of such part shall be the same as contained in such certificate.

Payments, how Credited.

§ 90. The comptroller shall, upon the receipt of such account, cause all payments therein to be duly credited to the several tracts, pieces or lots of lands so paid, on the books in his office, as specified by section thirty-nine of chapter two hundred and ninety-eight, of the laws of one thousand eight hundred and fifty; and the comptroller shall, on and after the first day of June next, be invested with all the powers and duties relating to the collection of said taxes of one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, and the sale of lands for non-payment of the same, as are conferred by this act in relation to unpaid taxes hereafter to be returned to, and admitted to the comptroller.

Exceptions.

§ 91. The provisions of this act (except sections two, three, eight, twelve, thirteen and fourteen), shall not in any manner affect or apply to the city and county of New York, the city of Albany, the city of Brooklyn, in the county of Kings, or the village of Williamsburgh, in said county of Kings; and in said sections the words "county treasurer" shall be construed to include the chamberlain of the city and county of New York.

Acts Repealed; Saving Clause.

§ 92. The act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands in the counties where they are assessed," passed April ten, one thousand eight hundred and fifty, and the act entitled "An act in relation to the publication of notices previous to the conveyance of lands sold for taxes," passed April six, one thousand eight hundred and fifty, and all laws inconsistent with this act, are repealed: but the repeal or anything contained, (except section thirty, in relation to the cancellation of over-

charged taxes, and sections eighty-nine and ninety, in relation to the taxes of the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, shall not in any manner affect any tax levied or assessed in either of the years one thousand eight hundred and forty-nine, one thousand eight hundred and fifty and one thousand eight hundred and fifty-one, nor any proceeding for the collection thereof, by sale of the land taxed or otherwise; nor the rights of any person which have accrued or may accrue by reason of any such sale or proceeding, nor the powers of county treasurers in relation to the collection of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, except as provided by sections eighty-nine and ninety, of this act above mentioned; and all taxes heretofore levied or assessed, which have been or shall be hereafter rejected by the comptroller, and shall be hereafter returned to him, after having been duly relaid or reassessed, with corrected descriptions, shall, for the purpose of this act, be deemed to have been levied and assessed in, and to be the taxes of the year in which the tax was so relaid and the description perfected.

LAWS 1860, CHAP. 209.

AN ACT to amend the act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five.

Section Sixty-five Amended.

SECTION 1. Section sixty-five of the act, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five, shall read as follows:

Conveyance, how Executed; presumption.

Such conveyance shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the deputy comptroller, surveyor-general or treasurer, and all conveyances hereafter executed by the comptroller, of lands sold by him for taxes, shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of the land, and all notices required by law to be given previous to be expiration of the two years allowed to redeem, were regular according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto. But where the person or persons claiming title under such conveyance, or the grantees or assignees of such persons, shall be in possession of the land described therein, either by himself or themselves, or his or their grantees, assignees, agents, tenants or servants, then such conveyance shall be presumptive evidence of the facts above stated, whatever may be the date of such conveyance.

LAWS 1862, CHAP. 285.

AN ACT to amend chapter four-hundred and twenty-seven of the laws of eighteen hundred and fifty-five.

Section Eighty-two Repealed.

SECTION 1. The eighty-second section of the act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five, is hereby repealed.

Comptroller and Employees not to be Interested in Sales.

§ 2. It shall be unlawful for the comptroller of this state, and for any person employed in the office of such comptroller, to be interested directly or indirectly in any tax sale made by such comptroller, or in the title acquired

by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale; and it shall be unlawful for any person to pay to the comptroller or to any employee in his office, and for the said comptroller or any employee in his office to receive, directly or indirectly any compensation, reward or promise thereof, from any person or persons who are interested in any purchase or purchases of lands sold for taxes, for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title. If any person offend against any provision of this section, he shall be deemed guilty of a misdemeanor; and the sale by the comptroller of any lands in which such person shall be interested contrary to the provision of this section, is hereby declared to be void.

LAWS 1870, CHAP. 280.

AN ACT to amend an act passed April thirteenth, eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

Right of Mortgagee to Redeem; Section Repealed.

SECTION 1. A mortgagee whose mortgage is duly recorded, or the assignee of any mortgage whose assignment is duly recorded, and the personal representatives of such mortgagee or assignee, who shall have filed with the comptroller, as required by law, a notice and description of his mortgage, may, at any time after the sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six months from the giving of the notice required by section seventy-seven of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the

sale of such lands for unpaid taxes," may redeem the said premises so sold, or any part thereof, from the said sale. If the said sale shall have been made by the comptroller, such redemption shall be made by paying to the state treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in the case of redemption by occupants from the date of such certificate; and, if the said sale shall have been made by a county treasurer, or other county officer, the redemption shall be made by paying to the county treasurer the amount for which said lands were sold, with interest at the same rate from the day of sale. The mortgagee or assignee of a mortgage or other person redeeming lands sold for unpaid taxes, as authorized by this section, shall have a lien on the premises so redeemed for the amount paid, with interest thereon from the time of such payment, at and after the rate of seven per centum per annum, in like manner as if the same had been included in the mortgage. Section one of chapter two hundred and eighty-five of the laws of eighteen hundred and sixty-two, entitled "An act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five," passed April seventeenth, eighteen hundred and sixty-two, is hereby repealed.

Section Seventy-seven of Chapter 427, *Laws of* 1855, *Amended.*

§ 2. Section seventy-seven of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, mentioned in the first section of this act, is hereby amended by adding thereto these words: "Such notice may be given at any time after the expiration of two years from the last day of such sale."

Section Eighty-one of Same Act Amended.

§ 3. Section eighty-one of said chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five is hereby amended by adding thereto the following paragraph:

"A copy of such notice served, together with the affidavit of some person, who shall be certified as credible by the officer before whom such affidavit shall be taken, that such notice was duly served, specifying the mode of service, shall be filed in the office of the comptroller within one month after such service."

LAWS 1873, CHAP. 120.

AN ACT conferring certain additional powers upon the comptroller.

Comptroller May Set Aside Cancellation of Sale.

SECTION 1. The comptroller of the State of New York shall have the power to set aside any cancellation of sale made by him under the provisions of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes" in either of the following cases: First. Whenever such cancellation was procured by fraud or misrepresentation. Second. Whenever such cancellation was procured by the suppression of any material fact bearing upon the case. Third. Whenever the cancellation was made under a mistake of fact. But the comptroller shall in all cases specify the particular grounds upon which said cancellation is set aside.

LAWS 1878, CHAP. 152.

AN ACT further to amend section two of title two of chapter thirteen of part one of the Revised Statutes, entitled "Of the assessment and collection of taxes," and to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

SECTION 1. Section two of title two of chapter thirteen of part one of the revised statutes, as amended by chapter one hundred and seventy-six of the laws of eighteen hundred and fifty-one, is hereby amended so as to read as follows:

§ 2. Lands occupied by a person other than the owner may be assessed to the occupant, as lands of non-residents, or, if the owner resides in the county in which such lands are located, to such owner.

Certain Sections of Act Amended.

§ 2. Sections nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-seven, thirty-three, thirty-four, thirty-seven, thirty-eight, forty-one, forty-eight and eighty-six of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, are hereby amended so as to read as follows:

Lands Imperfectly Described.

§ 9. Whenever any account of arrears of taxes on lands of non-residents shall be received by the comptroller from a county treasurer, he shall examine such account and reject all taxes entered thereon, that shall be found to be erroneous, and all taxes found thereon charged on lands erroneously or imperfectly described, and shall credit such county treasurer in a book to be kept by him for that

purpose, with the amount of all arrears of taxes which shall be admitted by him.

Rejected Taxes.

§ 16. The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise, to each county treasurer, a transcript of the taxes, of the preceding year, assessed in any town or ward in such county, which shall have been rejected by him for any cause whatever, stating therein the cause of such rejection.

Taxes on Lands Imperfectly Described.

§ 17. Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office are erroneous, or that they have been assessed on land erroneously described or so imperfectly described that they can not, in his opinion, be located with certainty, he shall cancel such taxes on the books of his office and charge them to the county in which such lands shall lie, with the interest thereon from the first day of March, in the year following that in which the taxes were laid to the first day of February next after such cancellation.

Transcript to be Delivered to Supervisors.

§ 18. The comptroller shall also transmit, by mail or otherwise, a transcript of the returns of such taxes, with the addition of such interest, to the proper county treasurer who shall deliver the same to the supervisor of the town or ward in which such taxes were assessed, by whom it shall be delivered to the board of supervisors at their next meeting. If the town or ward, in which such taxes were originally assessed shall have been divided since such assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

Description of Lands to be Made.

§ 19. Whenever the comptroller shall have rejected any tax in the first instance, or have cancelled and charged the same to a county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate, shall, if in his power, add to the assessment-roll of such town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands and the correct amount of taxes thereon, stating the tax of each year, and each kind of tax, separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and, if necessary, he may cause a survey and map of each lot or parcel returned for more perfect description to be made and the expense of such survey and map shall be a charge upon such land to be added to the tax thereon, and the board of supervisiors shall direct the collection of such taxes and expenses so added to such assessment-roll, and they shall, for all the purpose of this act, be considered as the taxes of the year in which the description shall be perfected. If the supervisor of such town or ward shall not have fully complied with the requirements of this section, the comptroller shall not thereafter admit, but shall reject all such reassessed, cancelled or rejected taxes as may be returned to him.

If not Made, Tax to be Assessed upon Town.

§ 20. If the correct amount of such taxes and an accurate description of such lands shall not have been added, by such supervisor, to the assessment-roll of his town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, the board of supervisors shall cause such arrears of taxes and the interest thereon, to be levied on the valuations of the estates, real and personal, of the town or ward in which such taxes were originally assessed, and shall

direct the same to be collected with the other taxes of the same year.

Where Town or Ward since Divided.

§ 21. If the town or ward in which such taxes were originally assessed shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns and wards included in the limits of such original towns or wards in such equitable manner as they may deem proper.

Certificate of Taxes Due.

§ 27. The comptroller shall, from time to time, give to any person desiring to pay the taxes, interest and charges due on any tract, piece or parcel of land, a certificate of the amount of such taxes, interest and charges; and the state treasurer may receive such taxes, interest and charges and give a receipt therefor upon such certificate, which shall be countersigned by the comptroller, and entered in the books of his office.

Land, when to be Sold

§ 33. Whenever any tax charged on lands returned to the comptroller, and the interest thereon shall remain unpaid for two years from the first day of May, following the year in which the same was assessed, the comptroller shall, as soon thereafter as he shall deem it for the best interests of the state, proceed to advertise and sell such lands in the manner hereinafter provided.

List of Lands and Notices of Sale.

§ 34. He shall make out a list or statement of the lands charged with such tax and interest and so liable to be sold, and shall cause so many copies thereof to be printed as shall be sufficient to furnish each county treasurer with at least five copies, and each town and city clerk with at

least two copies, and shall transmit to each county treasurer such number of said copies as shall be equal to five copies for such county treasurer and two copies for each town and city clerk in his county. And the comptroller shall also make and cause to be printed and published in two public newspapers to be selected by him in each county, once in each week, for ten successive weeks prior to the commencement of the sale, a list or statement of all the lands in such county charged with such tax and interest. Such publication shall be in the body of each newspaper, and not in a supplement. If there shall not be two newspapers, known to the comptroller, published in any county, such list or statement shall be published as required above, in the two newspapers which the comptroller shall believe to be most generally circulated in such county. But no error in the printed description in such newspapers shall vitiate or in any manner affect the validity of such sale; and all expenses of printing such lists or statements shall be audited by the comptroller, and paid out of the treasury of this state, on receiving one copy of the newspaper containing the same, with an affidavit of the publication of such list or statement according to the provisions of this section, to be made by the printer, publisher or some other person to whom the fact of such publication shall be known.

Expenses, how Charged.

§ 37. The expenses incurred by the state in printing and transmitting any list of lands liable to be sold for taxes, and in publishing notices of sale and lists or statements of such lands, shall be charged on the lands mentioned in such lists; and an equal part of such expense shall be estimated and apportioned by the comptroller and charged on each of the several tracts or parcels of such land.

Copies in Treasurer's Office.

§ 38. Each county treasurer shall retain in his office five of the copies of the list or statement of lands to be sold, transmitted to him, and shall permit all persons at all reasonable hours to examine the same, and shall cause the remaining copies to be delivered to the town and city clerks.

General Notice.

§ 41. After transmitting such lists to the county treasurers, the comptroller shall cause to be published, once in each week, for twelve weeks successively, in two newspapers in or for each county, to be selected by him in the same manner as is provided in section thirty-four of this act for selecting newpapers to publish the lists of lands liable to be sold, a general notice, stating that a list of all the lands liable to be sold for taxes has been forwarded to each of the county treasurers and town and city clerks in this state, and that so much of said lands as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale, will, on a day to be mentioned in such notice, and the succeeding days be sold at public auction at the capitol in the city of Albany.

New Certificate of Sale.

§ 48. When the comptroller shall have cancelled any sale in the manner provided in section forty-seven of this act, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable therefor by the original purchaser in case the said sale had not been cancelled, or if such certificate can not be sold, he may transfer the same to the people of the state; but in all cases where the people of the state becoming the purchasers by such transfer, the whole quantity of land liable to sale for the purchase-money mentioned in such certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale.

Expenses of Sale.

§ 86. The expenses attending the sales for taxes made under this act, including a due proportion of the expenses of printing and publishing lists and notices and transmitting copies thereof, not hereinbefore provided for, shall be a charge on the lands out of which the sales are made, and an equal part of such expense shall be estimated by the comptroller, and added to the taxes, interest and other charges on each parcel of land out of which a sale may be made.

LAWS 1881, CHAP. 402.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

Section Forty-three Amended.

SECTION 1. Section forty-three of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as to read as follows:

Comptroller may Apply for Maps; Lists to be Transmitted.

§ 43. 1. Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made shall furnish such maps, at the expense of the county, if they can be procured, and if not, they shall then furnish such descriptions of the lands as

they can obtain, with a statement of the quantity in each subdivision, if the same be divided.

2. It shall be the duty of the treasurer of each of the counties of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk and Sullivan, and of every other county for which there may, at the time, be a special law authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon, and by and under the provisions of which such taxes are not to be returned to the comptroller, and he is hereby required to transmit to the comptroller, at least one month prior to any state tax sale, a certified list and statement of all lands bid in in the name of his county at, or transferred to his county from, any tax sale, or to which his said county may have acquired tax title, the deed for which has not been recorded in the office of the clerk of his said county, which may then be liable to be sold at said sale.

3. It shall be the duty of the clerk of each of the several counties of this state, and he is hereby required to transmit to the comptroller, on the receipt of a list of the lands liable to be sold at any state tax sale, and at least one month prior to such sale, a certified list of all lands then on record in his office, or lands the deeds for which are in his office for record, then owned by his said county, and liable to be sold at such sale.

Section Forty-four Amended.

§ 2. Section forty-four of said act is hereby amended so as to read as follows:

Comptroller to Sell Lands.

§ 44. On the day mentioned in the notices, the comptroller shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel shall be sold as will be sufficent to pay all the taxes due thereon for the years for the taxes of which said

sale shall be made, with the interest and charges thereon; but no lot, piece or parcel of land against which the people of the state of New York then hold a bond or lien, for any part of the purchase-money thereof, or unpaid interest thereon, shall be sold at such sale.

Section 48 Amended.

§ 3. Section forty-eight of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, as amended by chapter one hundred and fifty-two of the laws of eighteen hundred and seventy-eight, is hereby amended so as to read as follows:

Canceled Certificates; Re-sale.

§ 48. When the comptroller shall have canceled any sale in the manner provided in section forty-seven of this act, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable therefor by the original purchaser, in case the said sale had not been canceled, or, if such certificate can not be sold, he shall transfer the same, if the land described thereon is in the county of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk, Sullivan or any other county for which there may, at the time, be a special law authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon, and by and under the provisions of which such taxes are not to be returned to the comptroller, to said county in which said land is located; but if it be located in any other county, he shall, in such case, transfer the same to the people of the state; but in all cases where either a county or the people of the state became the purchaser by such transfer the whole quantity of land liable to sale for the purchase-money mentioned in such certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale.

Section Fifty Amended.

§ 4. Section fifty of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five is hereby amended so as to read as follows:

Redemption of Lands Sold for Taxes; Lands not to be Despoiled.

§ 50. The owner or occupant of any land so sold for taxes, or any other person, may redeem the same, as hereinafter provided, at any time within two years after the last day of such sale, by paying to the state treasurer, on the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate of sale therefor, with interest thereon at the rate of ten per centum per annum, from the date of such certificate of sale; but until such redemption shall be made, neither such owner nor occupant, nor any other person, shall have any right to despoil such land of its value by the destruction or removal of any building, or by the cutting, removal or destruction of timber or other valuable products growing, existing, or being thereon. The purchaser of any wild, vacant or unoccupied land at such sale, or the assigns of such purchaser, shall have no right or authority to enter upon or exercise acts of ownership over such land, until the expiration of the two years allowed for the redemption thereof from such sale; but such purchaser, whose bid therefor shall have been fully paid, or the assignee or representative of such purchaser at such sale may, at any time within twenty-three months from the last day of said sale, serve, or cause to be served, a notice on any person despoiling said land, or any person interested in such despoliation; which notice may be served personally or by leaving the same at the residence of such person with any member of his family of suitable age and discretion, and shall state that such land, describing it substantially as sold, was sold for taxes by the comptroller,

and that unless the said land be redeemed within one month from the date of the service of such notice, an action to recover the value of the buildings or products destroyed or removed therefrom from the date of the said sale thereof will be instituted against any or all persons concerned in such depredations. And, if such land shall not be redeemed from said sale within one month from the day of the service of such notice, then the person or persons engaged or interested in making such depredations shall be liable, if adjudged guilty by the court before which such action is held to pay to the holder of the said tax sale certificate therefor, the full value of any building so destroyed or removed therefrom, and of the timber, bark or other products so cut, destroyed or removed therefrom, from the date of the said tax sale of said land to the termination of said action.

Section Sixty-Six Amended.

§ 5. Section sixty-six of said act is hereby amended so as to read as follows:

When Comptroller to Bid in: Certificates: Deeds.

§ 66. 1. It shall be the duty of the comptroller, at any tax sale held by him, to bid in for the state all lands liable to sale thereat then belonging to the state or that are then mortgaged to the commissioners for loaning certain monies of the United States; and to bid in for each of the counties of the state all other lands liable to be sold thereat then belonging to said counties, respectively, and also all lands which may have been bid in by or for said counties, respectively, at any tax sale which has not been cancelled, or from which said lands may not have been duly redeemed, and to reject any and all other bids which may be made for any or all of said lands.

2. It shall further be the duty of the comptroller, at any such sale, to bid in for each of the counties of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk and Sul-

livan, and for all other counties for which there may at the time be special laws authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon and by and under the provisions of which such taxes are not to be returned to the comptroller, respectively, every lot of land in each of said counties, respectively, liable to be sold at said sale, for which no person shall offer to bid, and to bid in for the state every other lot of land liable to be sold at said sale for which no person shall so offer to bid.

3. Certificates of sale for all lands bid in by the comptroller under the provisions of subdivisions one and two of this section shall be made by the comptroller, which shall describe the lands purchased and specify the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals.

4. The comptroller shall charge to each county, respectively, on the books of his office, the amount for which it may be liable, by reason of any and all purchases made in accordance with the preceding provisions of this section. Such amount shall become due on the last day of each tax sale, respectively, and shall be payable in the same manner as the state tax is now required by law to be paid.

5. The comptroller shall, as soon as practicable after each tax sale, transmit the certificates of sale for said lands to the treasurer of each of said counties, respectively, on receipt of which, said treasurer shall enter the same, in their proper order, in a book to be provided by him for such purpose, and shall have, unless otherwise directed by the board of supervisors of his county, full power and authority, until the expiration of two years from the last day of said sale, to sell and assign any or all of said certifi-

cates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described thereon was sold at said tax sale, with interest thereon from the date of such tax sale to the date of such sale and assignment by him. Any such sale and assignment shall be duly and fully entered by such county treasurer in the book aforesaid, which book shall be a part of the records of the county.

6. In case said tax sale certificate or certificates shall not have been sold or assigned by the respective county treasurers on or before the expiration of two years from the last day of said sale, each of said county treasurers shall then transmit such unsold certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all the lands described thereon then remaining unredeemed, or the sale of which has not been cancelled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined on by a majority of such board at any regular or special meeting thereof.

Inconsistent Acts Repealed.

§ 6. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

LAWS 1885, CHAPTER 448.

AN ACT to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

Section Sixty-five of Act Amended.

SECTION 1. Section sixty-five of chapter four hundred and twenty-seven of the laws of eighteen hundred and

fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as read as follows:

Comptroller to Execute Conveyance; Evidence.

§ 65. Such conveyances shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the treasurer or deputy comptroller, and all such conveyances that have been heretofore executed by the comptroller, and all conveyances of the same lands by his grantee or grantees therein named, after having been recorded for two years in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller that shall have remained in force for two years after the last day allowed by law to redeem from such sale shall, six months after this act takes effect, be conclusive evidence that the sale and all proceedings prior thereto, from and including the assessment of the land and all notices required by law to be given previous to the expiration of the two years allowed by law to redeem, were regular and were regularly given, published and served according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto, and all other conveyances or certificates heretofore or hereafter executed or issued by the comptroller, shall be presumptive evidence of the regularity of all the said proceedings and matters hereinbefore recited, and shall be conclusive evidence thereof from and after the expiration of two years from the date of recording such other conveyances or of four years from and after the date of issuing such other certificates. But all such conveyances and certificates and the taxes and tax sales on which they are based, shall be subject to cancellation, as now provided by law, on a direct application to the comptroller or an action

brought before a competent court therefor, by reason of the legal payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid.

Act Applicable Only to Certain Counties.

§ 2. The provisions of this act are hereby made applicable only to the following counties, namely: Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Sullivan, Ulster, Warren and Washington, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken, or application duly made within six months thereafter for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder.

[This section amended by L. 1891, ch. 217, and L. 1893, ch. 398; pages 86 and 88, *infra*.]

LAWS 1885, CHAP. 453.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

Section Four of Act Amended.

SECTION 1. Section four of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as to read as follows:

Return of Unpaid Taxes on Non-resident Lands; Evidence.

§ 4. Whenever any county treasurer shall receive from a collector an account of unpaid taxes assessed on lands of non-residents, such county treasurer shall compare the same with the original assessment-roll to which the collector's warrant is attached, which rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof he shall add to it a certificate showing that he has examined and compared the account with said roll and found the same to be correct; and after crediting the collector with the amount, shall, before the first day of April next ensuing, transmit the account and collector's affidavit to the comptroller, with a certificate that he has compared the account with the entries of the same taxes in the original assessment-roll to which the collector's warrant is attached, and has found the same to be a true transcript of such roll. The comptroller may, before admitting any taxes thereon, return such accounts to the respective county treasurers for correction or completion, which must be returned to him within one month thereafter, or as the comptroller may otherwise direct, and such account, when accepted by the comptroller, shall be deemed conclusive evidence of the regularity and validity of all taxes thereon which may be admitted by him and of all prior proceedings in assessing the lands and levying and collecting such taxes, except in cases when it shall be satisfactorily proven to the comptroller that any such tax was duly paid in the county, or was levied on an assessment of land by a town or ward having no legal right to assess the same, or arose from a double assessment, the taxes levied on one of which were duly paid.

Section Twenty-two Amended.

§ 2. Section twenty-two of said chapter is hereby amended so as to read as follows:

Cancellation of Tax; Relevy; Evidence.

§ 22. Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was, previously to such return, paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall also have been paid into the state treasury, he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made. Whenever any unpaid tax, levied upon an assessment of land by a town or ward having a legal right to assess the same, which may have been returned to and admitted by the comptroller, shall be ascertained, either before or after sale therefor, to be illegal or void by reason of any irregularity or defect in, or omission of, statutory requirements for creating or collecting such tax, the comptroller is hereby empowered and directed, whenever deemed practicable by him, to relevy the correct amount of such tax and add thereto the five per cent allowed by law to be added by the collector, which aggregate amount of tax and charge, with interest thereon at ten per cent per annum from the first day of August following the admission of such illegal or void tax, shall thereupon be due and payable, and shall be subject to existing provisions of law governing the collection of and sale for unpaid taxes by the comptroller; but no tax arising from a double assessment, the taxes levied on one of which shall be satisfactorily proven to the comptroller to have been duly paid, shall be subject to such relevy. Such relevy of any invalid or defective tax shall be conclusive evidence of its regularity and legality, and any such tax, so relevied, shall be treated and subject to payment as though such sale had not been made, and, if allowed to remain unpaid, the land shall be sold therefor.

Section Seventy-four Amended.

§ 3. Section seventy-four of said chapter is hereby amended so as to read as follows:

Redemption after Sale.

§ 74. The occupant of any such lot, or any other person, may, at any time before the service of said notice by the purchaser, or the the* person claiming under him, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and a half per cent thereon, together with the sum paid for a deed, if any, and such amounts as may have been paid to the state for subsequent taxes thereon, or for redemptions from subsequent tax sales thereof, and, in addition thereto, providing such lot has been legally exempt from taxation for one or more years subsequent to the sale in question, of a sum that would represent the gross amount of taxes, and interest that would have been due thereon, providing it had been taxed, during each of the years it may have been so exempt, on its assessed valuation, and at the rate per cent of taxation thereon for the year when last returned to the comptroller's office.

Additional Section.

§ 4. Said chapter is hereby amended by the addition thereto of the following section:

After Advertisement, Lands to be Deemed in Possession of State.

§ 93. From and after the advertisement, once a week for three successive weeks, of a list of wild, vacant or forest lands, to which the state holds title from a tax sale or otherwise, in one or more newspapers to be selected by the comptroller, published in the county in which such lands may be located, all of such wild, vacant or forest lands shall be deemed, and are hereby declared to be, in the actual possession of the comptroller of this state; and such possession shall be deemed to continue until

* So in the original.

he has been dispossessed by the judgment of competent tribunal.

Act not Applicable to Certain Counties.

§ 5. The provisions of this act shall not apply to the counties of Cattaraugus and Chautauqua.

LAWS 1890, CHAP. 556.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

Section Seventy-four of Act Amended.

SECTION 1. Section seventy-four of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," as amended by chapter four hundred and fifty-three of the laws of eighteen hundred and eighty-five, is hereby further amended so as to read as follows:

Redemption of Lands by Occupant.

§ 74. The occupant of any such lot, or any other person may at any time before the service of said notice by the purchaser or the person claiming under him, and within three years from the expiration of the two years allowed by law for the redemption thereof, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and one-half per centum thereon together with the sum paid for a deed, if any, and such amount as may have been paid

to the state for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and, in addition thereto, providing such lot has been legally exempt from taxation for one or more years subsequent to the sale in question, of a sum that would represent the gross amount of taxes and interest that would have been due thereon, providing it had been taxed during each of the years it may have been exempt, on its assessed valuation, and at the rate per cent of taxation thereon for the year when last returned to the comptroller's office. In all cases of tax sales heretofore made by the comptroller, where the land sold was in the actual occupancy of any person at the expiration of the two years allowed for the redemption thereof, and the purchaser or the person claiming under him shall have failed to serve notice of such sale on the occupant or occupants thereof and to file evidence of such service in the comptroller's office, as provided by section sixty-eight of this act, and the occupant or any other person shall fail to file in the comptroller's office within one year after this act shall take effect, a written notice of such occupancy together with an application for the redemption of such lands, and to furnish the comptroller with satisfactory evidence of the occupancy required and make such redemption within two years after this act shall take effect, then, and in all such cases, the said tax sale of such land, and the conveyance thereof by the comptroller, shall become absolute, and the occupant and occupants and all other persons interested in the said lands shall be forever barred from all right and title thereto.

Inconsistent Acts Repealed.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

LAWS 1891, CHAP. 217.

AN ACT to amend chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes.'"

Act Amended.

SECTION 1. Section two of chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes,'" is hereby amended so as to read as follows:

Application of Act.

§ 2. The provisions of this act are hereby made applicable to all the counties in this state, except the counties of Cattaraugus and Chautauqua, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken or application duly made within six months thereafter, for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder. All applications heretofore or hereafter made to the comptroller for the cancellation of any tax sale by any person interested in the event thereof, shall be heard and determined by him, and his determination shall be subject to review by certiorari, or otherwise. The provisions of this act shall also be applicable to all conveyances made by county treasurers or county judges and to all outstanding certificates from county treasurer's sales.

Proceedings Barred.

§ 2. Nothing herein contained shall be construed to permit a proceeding to be begun or application to be made which is already barred by the provisions of the act hereby amended.

LAWS 1892, CHAP. 463.

AN ACT in relation to the redemption of lands sold at tax sales prior to the year eighteen hundred and ninety.

Time Extended for Action on Application for Redemption.

SECTION 1. In all cases in which a written notice of occupancy, together with an application for the redemption from any tax sale made prior to the year eighteen hundred and ninety, of any lands sold thereat for taxes, was filed in the comptroller's office on or before June seventh, eighteen hundred and ninety-one, in pursuance of the provisions of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety, and proof tending to show the actual occupancy of such lands, as provided by said act, has been filed or may be filed in said office on or before June seventh, eighteen hundred and ninety-two, affidavits and proof in opposition to such application may be presented to the comptroller at any time prior to September first, eighteen hundred and eighty-two, and the time within which the comptroller can take action on and allow or reject such applications for redemption, and the time within which such redemptions as are allowed by the comptroller can be made, is hereby extended to December first, eighteen hundred and ninety-two.

Inconsistent Acts Repealed.

§ 2. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

LAWS 1892, CHAP. 624.

AN ACT to confirm tax proceedings under chapter two hundred and ninety-eight of the laws of eighteen hundred and fifty.

Tax Sales in Certain Counties Confirmed.

SECTION 1. All tax sales made by the county treasurers of Lewis, Hamilton, Franklin and Herkimer counties, under and in pursuance of chapter two hundred and ninety-eight of the laws of eighteen hundred and fifty, passed April tenth (for the sale of lands in the counties where they were assessed), and all certificates of sale made and delivered by him to any purchaser of any lands at any such sale, and all deeds, executed by such treasurer and the county judge of such county, of any real estate so sold to the purchaser, his heirs or assigns, under and in pursuance of said act, are hereby legalized, confirmed and made valid. Said certificates and deeds respectively shall be received and held in all proceedings as conclusive evidence of a complete title; except that the owner of any real estate so sold, may show that said tax was imposed, and the proceedings to enforce it, were without jurisdiction.

LAWS 1893, CHAP. 398.

AN ACT to further amend chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes.'"

Act Amended.

SECTION 1. Section two of chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An act to amend chapter four hundred and

twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes,'" as amended by chapter two hundred and seventeen of the laws of eighteen hundred and ninety-one, is hereby further amended so as to read as follows:

Application of Act.

§ 2. The provisions of this act are hereby made applicable to all the counties in this state, except the counties of Cattaraugus and Chautauqua but shall not effect any action, proceeding or application pending at the time of the passage of the act hereby amended, nor any action begun, proceedings taken, or application duly made within six months thereafter, for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder.

Saving Clause.

§ 2. Nothing contained in this act shall be construed to affect any action or proceeding now pending in any court of record, for the purpose of reviewing any determination of the comptroller of the state of New York.

LAWS 1883, CHAP. 13.

AN ACT to prohibit sales of lands belonging to the state in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence and Warren.

SECTION 1. Hereafter and from the passage of this act no sales shall be made of lands belonging to the state situated in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence and Warren.

§ 2. Nothing in this act shall be construed as prohibiting the commissioners of the land office from conveying

lands heretofore contracted to be sold, and not yet conveyed, to the purchasers thereof.

LAWS 1885, CHAP. 283.

AN ACT to establish a forest commission, and to define its powers and duties and for the preservation of forests.

SECTION 1. There shall be a forest commission which shall consist of three persons who shall be styled forest commissioners, and who may be removed by the governor for cause. The forest commissioners shall be appointed by the governor by and with the advice and consent of the senate.

* * * * * * *

§ 5. The forest commission shall have power to employ a forest warden, forest inspectors, a clerk and all such agents, as they may deem necessary, and to fix their compensations, but the expenses and salaries of such warden, agents, clerk, inspectors and assistants shall not exceed in the aggregate with the other expenses of the commission the sum therefor appropriated by the legislature.

* * * * * * *

§ 7. All the lands now owned or which may hereafter be acquired by the state of New York, within the counties of Clinton, excepting the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall constitute and be known as the forest preserve.

§ 8. The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.

§ 9. The forest commission shall have the care, custody, control and superintendence of the forest preserve. It

shall be the duty of the commission to maintain and protect the forests now on the forest preserve, and to promote as far as practicable the further growth of forests thereon. It shall also have charge of the public interests of the state, with regard to forests and tree planting, and especially with reference to forest fires in every part of the state. It shall have as to all lands now or hereafter included in the forest preserve, but subject to the provisions of this act, all the powers now vested in the commissioners of the land office and in the comptroller as to such of the said lands as are now owned by the state. The forest commission may, from time to time, prescribe rules or regulations and may, from time to time, alter or amend the same, affecting the whole or any part of the forest preserve, and for its use, care and administration; but neither such rules or regulations, nor anything herein contained shall prevent or operate to prevent the free use of any road, stream of water as the same may have been heretofore used or as may be reasonably required in the prosecution of any lawful business.

§ 10. The forest warden, forest inspectors, foresters and other persons acting upon the forest preserve under the written employment of the forest warden or of the forest commission may, without warrant, arrest any person found upon the forest preserve violating any of the provisions of this act; but in case of such arrest, the person making the arrest shall forthwith take the person arrested before the nearest magistrate having jurisdiction to issue warrants in such case, and there make, or procure to be made, a complaint in writing, upon which complaint the magistrate shall act as the case may require.

§ 11. The forest commission may bring in the name, or on behalf of the people of the state of New York, any action to prevent injury to the forest preserve or trespass thereon, to recover damages for such injury or trespass, to recover lands properly forming part of the forest preserve, but occupied or held by persons not entitled thereto, and

in all other respects for the protection and maintenance of the forest preserve, which any owner of lands would be entitled to bring. The forest commission may also maintain, in the name or on behalf of the people of the state, an action for the trespass specified in section seventy-four, article fifth, title five, chapter nine, part one of the Revised Statutes, when such trespass is committed upon any lands within the forest preserve. In such action there shall be recoverable the same penalty, and a like execution shall issue, and the defendant be imprisoned thereunder without being entitled to the liberties of the jail, all as provided in sections seventy-four and seventy-six of the said article; and in such action the plaintiff shall be entitled to an order of arrest before judgment as in the cases mentioned in section five hundred and forty-nine of the Code of Civil Procedure. The trespass herein mentioned shall be deemed to include, in addition to the acts specified in the said section seventy-four, any act of cutting or causing to be cut, or assisting to cut, any tree or timber standing within the forest preserve, or any bark thereon, with intent to remove such tree or timber, or any portion thereof, or bark therefrom, from the said forest preserve. With the consent of the attorney-general and the comptroller, the forest commission may employ attorneys and counsel to prosecute any such action, or to defend any action brought against the commission or any of its members or subordinates arising out of their or his official conduct with relation to the forest preserve. Any attorney or counsel so employed shall act under the direction of and in the name of the attorney-general. Where such attorney or counsel is not so employed, the attorney-general shall prosecute and defend such actions.

* * * * * *

§ 14. All income that may hereafter be derived from state forest lands shall be paid over by the forest commission to the treasury of the state.

* * * * * *

§ 16. The forest commission shall, in January of every year, make a written report to the legislature of their proceedings, together with such recommendations of further legislative or official action as they may deem proper.

* * * * * *

§ 19. The forest commission shall, as soon as practicable, prepare tracts or circulars of information giving plain and concise advice for the care of woodlands upon private lands, and for the starting of new plantations upon lands that have been denuded, exhausted by cultivation, eroded by torrents, or injured by fire, or that are sandy, marshy, broken, sterile or waste, and unfit for other use. These publications shall be furnished without cost to any citizen of the state, upon application, and proper measures may be taken for bringing them to the notice of persons who would be benefited by this advice.

* * * * * *

§ 30. The forest commission shall, with as little delay as practicable, cause rules for the prevention and suppression of forest fires to be printed for posting in schoolhouses, inns, saw-mills and other wood-working establishments, lumber camps and other places, in such portions of the state as they may deem necessary. Any person maliciously or wantonly defacing or destroying such notices shall be liable to a fine of five dollars. It shall be the duty of forest agents, supervisors and school trustees to cause these rules, when received by them, to be properly posted, and replaced when lost or destroyed.

§ 31. Any person who shall willfully or negligently set fire to, or assist another to set fire to, any waste or forest lands belonging to the state or to another person, whereby the said forests are injured or endangered, or who suffers any fire upon his own land to escape or extend beyond the limits thereof, to the injury of the woodlands of another or of the state, shall be a liable to a fine of not less than fifty dollars nor more than five hundred dollars, or to imprisonment of not less than thirty days nor more than six

months. He shall also be liable in an action for all damages that may be caused by such fires; such action to be brought in any court of this state having jurisdiction thereof.

TAX LAW OF 1896.

Cancellation of Sales.

§ 140. The comptroller shall not convey any lands sold for taxes if he shall discover before the conveyance, that the sale was for any cause invalid or ineffectual to give title to the lands sold; but he shall cancel the sale and forthwith cause the purchase money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns. If the error originated with the county or town officers the sum paid shall be a charge against the county from which the tax was returned, and the board of supervisors thereof shall cause the same to be assessed, levied and collected and paid into the state treasury. If he shall not discover that the sale was invalid until after a conveyance of the lands sold shall have been executed he shall, on application of any person having any interest therein at the time of the sale, on receiving proof thereof, cancel the sale, refund out of the state treasury to the purchaser, his representatives or assigns, the purchase-money and interest thereon, and recharge the county from which the tax was returned, with the amount of purchase money and interest from the time of sale, which the county shall cause to be levied and paid into the state treasury. On any such application the comptroller may appoint a commissioner with like powers and duties as in case of an application for redemption; provided, however, that in any county which does not include a portion of the forest preserve, such application for cancellation may also be made by the owner of the lands at the time of the tax sale.

LAWS 1896, CHAP. 218.

AN ACT to authorize the state comptroller to hear and determine the application of Emma Zalia for cancellation of the sale of eighteen hundred and ninety of lot one hundred and eighty-nine, Paradox tract, Essex county, for unpaid taxes.

SECTION 1. Jurisdiction is hereby conferred upon the comptroller of this state to hear and determine the application of Emma Zalia for the cancellation of the eighteen hundred and ninety tax sale of lot one hundred and eighty-nine, Paradox tract, Essex county, for unpaid taxes, and conveyed therefrom to the people of the state of New York; said Zalia claiming to be the owner thereof, and the said comptroller is hereby authorized to act upon said application in the same manner and with the same effect as if the application were made by the purchaser at the said tax sale.

LAWS 1870, CHAP. 321.

AN ACT to provide for the appraisal of canal claims against the State.

SECTION 1. Jurisdiction is hereby granted to and conferred upon the Canal Appraisers to hear and determine all claims against the State of any and all persons and corporations for damages alleged to have been sustained by them from the canals of the State, or from their use and management, or resulting or arising from the negligence or conduct of any officer of the State having charge thereof, or resulting or arising from any accident or other matter or thing connected with the canals; but no award shall be made unless the facts proved shall make out a case which would create a legal liability against the State were the same established in evidence in a court of justice against an individual or corporation; and in case such legal liability shall be satisfactorily established, then the Appraisers shall award to the claimants such sum as

shall be just and equitable, subject, however, to the right of appeal to the Canal Board in all cases, in the manner now provided by law; provided that the provisions of this act shall not extend to claims arising from damages resulting from the navigation of the canals.

§ 2. The claimants shall file their claims in the office of the Canal Appraisers within two years from the time said damages shall have accrued, but claims for damages which shall have accrued more than one year prior to the passage of this act shall be filed within one year from the date hereof. The Canal Appraisers are hereby authorized and required to employ counsel on behalf of the State, on the hearing of such claims, as may be necessary to protect the interests of the State. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 3. The said board of Canal Appraisers shall prescribe rules as to the form and manner in which claimants shall make out and verify their statement of claims; and they shall provide a general rule for the taking of evidence when the witness shall not be examined orally before said board, and for reducing to writing and preserving said evidence when taken. The said board is hereby authorized to issue subpœnas for the attendance of witnesses, and shall have power to compel their attendance by attachment, and to punish them for contempt, in the same manner as is now provided by law in relation to courts of record; and the said board shall also have power to administer oaths to witnesses and to issue commissions for the examination of witnesses residing out of the State.

LAWS 1876, CHAP. 444.

AN ACT to establish a state Board of Audit, and to define its powers and duties.

SECTION 1. A state board of audit is hereby constituted and established which shall be composed of the comptroller, the secretary of state, and the state treasurer.

§ 2. It shall be the duty of said board of audit, and it shall have power to hear all private claims and accounts against the State (except such as are now heard by the canal appraisers according to law), to administer oaths and take testimony in relation thereto, to determine on the justice and amount thereof, and to allow such sums as it shall consider should equitably be paid by the State to the claimants. Its decision shall be filed in the office of the Secretary of State. It shall be the duty of the Attorney General to attend every hearing before said Board of Audit, for the purpose of protecting the interests of the State, and he shall have authority to subpœna and examine witnesses on behalf of the State in reference to such claims or accounts.

§ 3. Said Board shall establish rules as the times of its sessions, which shall be at least as often as once in each month, and as to the forms and methods of procedure before it. Two members of said Board shall constitute a quorum. The concurrent vote of two of its members shall be necessary to, and shall constitute a decision.

§ 4. The Secretary of State at the opening of each session of the Legislature, and at other times when so requested by the Legislature, shall send a report thereto, containing a full list of all claims and accounts acted upon by said board, with the evidence taken and their action on each thereof, since the last preceding report.

LAWS 1883, CHAPTER 205, AS AMENDED BY CHAPTER 60 OF LAWS OF 1884.

AN ACT to abolish the office of canal appraiser and the state board of audit, and to establish a board of claims and define its powers and duties.

SECTION 1. The governor, by and with the advice and consent of the senate, shall appoint three persons commissioners of claims who shall be citizens of this state, and of whom two, but not more, shall be practicing attorneys and coun-

selors of the supreme court; they shall constitute a board of claims. Said commissioners to be first appointed shall be appointed for the term of two, four and six years, respectively, from the first day of January next ensuing their appointment, and until their successors shall be appointed and have qualified, and shall enter upon the duties of their office on the first day of June, eighteen hundred and eighty-three. Two of said commissioners shall constitute a quorum for the transaction of business; the commissioner having the shortest time to serve and who is a counselor of the supreme court shall act as presiding officer of the board. Whenever the term of office of any commissioner of claims shall expire, the governor in like manner shall appoint a successor for the full term of six years. When a vacancy in the office shall occur before the expiration of its term, the same shall be filled for the unexpired term by appointment by the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session, the governor may appoint some suitable person to fill such vacancy until the first day of January next succeeding such appointment, and the remainder of the unexpired term shall be filled in like manner as if such vacancy had occurred during the session of the senate. The governor may remove any commissioner of claims within the term for which he shall have been appointed, but before removing him he shall give to such officer a copy of the charges against him and an opportunity of being heard in his defense. Each of said commissioners shall take and subscribe the oath of office required by the constitution and file the same in the office of the secretary of state, and shall receive a compensation of five thousand dollars per annum, payable quarterly, and his necessary expenses, not exceeding five hundred dollars per annum for each commissioner. The persons appointed under this act to fill vacancies shall possess the same qualifications as the commissioner whose place such person is appointed to fill.

§ 2. The board of commissioners shall appoint, and at pleasure may remove, a clerk, a stenographer, who shall act as deputy clerk, and a messenger, each of whom, before entering upon the duties of his office, shall take the oath of office required by the constitution, and file the same in the office of the secretary of state; they shall perform their duties under the direction of the board. The clerk, under the direction of the board, shall disburse the fund which from time to time may be appropriated for the use of said board, and before entering upon the duties of his office, he shall make and file in the office of the comptroller a bond, for the faithful performance of his duties, in an amount and with sufficient sureties to be approved by the board, which approval shall be endorsed on said bond. The clerk shall receive an annual salary of three thousand dollars, in lieu of all fees, except for copies of papers. The stenographer shall receive an annual salary of fifteen hundred dollars, and five cents a folio for copies of minutes and testimony furnished at the request of the claimant; but no charge shall be made against the state by the clerk or stenographer for copies of minutes, testimony or papers furnished the attorney-general or the board of commissioners, or filed in the office of the clerk. The stenographer shall file with the clerk a copy of the minutes and testimony taken in each claim heard by the board. The messenger shall receive an annual salary of eight hundred dollars, and the clerk, stenographer and messenger shall each receive actual expenses while in the discharge of their respective duties at other places than the city of Albany. Said salaries shall be payable monthly. The commissioners shall meet on the first Monday in June, eighteen hundred and eighty-three, at the city of Albany, for the purpose of organization and appointment of said clerk, stenographer and messenger, and for the adoption of rules of procedure.

[As amended by chap. 60 of 1884.]

§. 3. Each of said commissioners and the clerk of said board shall have the power to administer oaths, and

said board shall have authority to establish rules for its government, and the forms and methods of procedure before it; to issue subpœnas to witnesses to appear and testify, and for the production of books and papers; to compel obedience to such subpœnas by attachment; to punish for contempt in like cases and in like manner as the supreme court; to issue commissions to take testimony, either within or without this state, to be used before it in like cases and in like manner as the supreme court issues such commissions. When testimony is taken on commission, at the instance of the claimant, the fees of the commissioner before whom it is taken and the expense of the commission shall be paid by the claimant, and when taken at the instance of the state, such commissioner's fees, together with all expense incurred by the attorney-general in his official capacity, shall be paid out of the contingent fund to be provided for said board. On the first day of January, in each year, the clerk shall report, under oath, to the comptroller a detailed statement of his receipts and disbursements for the preceding year.

§ 4. The said board shall hold at least four sessions in each year in the city of Albany, commencing, respectively, on the second Tuesday of January, April, September and November, and shall continue each session so long as may be necessary for the disposition of business, and it may hold adjourned sessions at such other times and places in the state as the board may determine necessary and proper. The sheriff of any county other than the county of Albany, on notice from said board, shall furnish suitable rooms in the court house of his county for any session or adjourned session of said board, and shall in person or by deputy if required by said board, attend said session or adjourned session, and his fees for attendance shall be paid out of the contingent fund of said board, at the same rate as for attending a term of the supreme court in said county.

[As amended by chap. 60 of 1884.]

§ 5. The attorney-general in person or by deputy shall attend each session of said board on behalf of the state; shall prepare all cases on the part of the state for hearing, and argue the same when prepared; shall cause testimony to be taken when necessary to secure the interest of the state; shall prepare forms, file interrogatories and superintend the taking of testimony in the manner prescribed by said board; and generally shall render such service as may be necessary to further the interests of the state in all cases before said board and in the court of appeals on appeal from the awards of said board; in all cases of claims before said board of which the canal appraisers have heretofore had jurisdiction, the superintendent of public works, on request from the attorney-general, shall furnish him such assistance as he may require to subpœna witnesses and prepare the cases for trial on the part of the state.

§ 6. Said board shall keep a record of its proceedings, and at the commencement of each session of the legislature, and at such other times during each session of the legislature as it may deem proper, or as the senate or assembly may request, report to the legislature the claims upon which it has finally acted, with the statement of the award made in each case. Said board shall have and use a seal, which shall conform as to the device thereon, and the size thereof, to the requirements contained in the provisions of chapter one hundred and ninety of the laws of eighteen hundred and eighty-two. The copy of any record, order, award or other paper certified by the clerk of said board, under the seal of said board, shall be entitled to be read in evidence, in any and all courts, and before any and all officers, with the same force and effect as papers certified under the seal of the supreme court, by a clerk thereof. Said seal shall be procured for said board by its clerk, and kept in the office of said clerk.

[As amended by chap. 60 of 1884.]

§ 7. Said board shall have jurisdiction to hear, audit and determine all private claims against the state which shall have accrued within two years prior to the time when such claim is filed, except claims barred by any existing statute, and to allow thereon such sums as should be paid by the state. Such board, however, shall have jurisdiction of such claims as were formerly cognizable by the state board of audit, provided they shall be filed on or before July first, eighteen hundred and eighty-four, and shall not have accrued more than six years prior to such filing. It shall also have jurisdiction of all claims, on the part of the state, against any person making a claim against the state before said board, and shall determine such claim or demand, both on the part of the state and the claimant; and if it finds that the demand of the state exceeds the demand of the claimant, it shall award such excess in favor of the state against the claimant.

[As amended by chap. 60 of 1884.]

§ 8. On the termination of a hearing before the board of claims, the commissioners, or any two of them, shall make and assign* the award of the board, which shall contain the names of the persons interested, the names of the attorneys, if any, who appeared for the claimant, or by whom the claim was made, the amount allowed the claimant, if any, and if it be a case where the state seeks to appropriate or has appropriated lands for public use, a description by metes and bounds of the land appropriated and for which the award is made, and what amount, if any, the board has deducted from the claim for claims of the state against the claimant, or payments, an entry of which shall be made in detail by the clerk of said board in the book kept by him for that purpose, which entry shall signed by the commissioners making such award.

§ 9. Books shall be kept in the office of the clerk of said board in which the orders and awards of said board shall be entered by the clerk of said board, and each of said

* So in original.

awards shall be entered by him in detail; and he shall attach all the papers in any one claim, with a copy of the testimony and certified copies of all orders therein, to a certified copy of the final order or award, and file the same in his office. Any such final order or award in favor of the state shall be final and conclusive as between the state and the claimant, and the state may sue for and enforce collection of the same in any court having jurisdiction. The attorney-general shall take such proceedings as may be necessary to enforce any such order or award in favor of the state.

[As amended by chap. 60 of 1894.]

§ 10. When the amount in controversy exceeds five hundred dollars, either party feeling aggrieved by the final award or final order of the board may appeal to the court of appeals, upon questions of law only, arising upon the hearing of the claim or upon the excess or insufficiency of such award or order. The court of appeals shall hear such appeal, and affirm, reverse or modify such award or order, or dismiss such appeal, or award a new hearing before the board of claims, as justice may require. Every appeal shall be in writing, stating briefly the grounds upon which it is taken, and subscribed by the party or his attorney. A copy of such notice of appeal shall be served upon the clerk of the board and upon the attorney-general. When the appeal is taken by the state, copies of such notice of appeal shall be served upon the clerk of the board and the claimant, or the attorney appearing for him. Service of notice of appeal shall be made in like manner as in the supreme court. The appeal must be taken within thirty days after service of notice of the final award or order of the board. The party taking an appeal shall, at or before the time of serving the notice thereof, unless said board, or a commissioner thereof, shall extend the time, make and serve upon the attorney-general, or, if the appeal is taken by the state, upon the claimant or the attorney appearing for him on the hearing before the board, a case

containing so much of the evidence given before the board as may be necessary to present the questions raised by the notice of appeal; the respondent may propose amendments, and one of the commissioners before whom the claim was heard shall settle the same and sign the case so settled. And in case no appeal is taken from the decision of said board, as provided by this act, the decision of the board shall be final.

[As amended by chap. 60 of 1884.]

§ 11. On the hearing before the court of appeals, only such questions shall be considered by the court as are raised by the notice of appeal. And on all questions not raised by the notice of appeal it shall be presumed that sufficient evidence was given on the hearing to sustain the order or award. The practice upon the hearing of appeals in the court of appeals, from the final order or award of the board, shall conform, as near as may be, to the practice prevailing upon appeals from the courts of record of this state. Upon the hearing of all claims before the board, the rules of evidence now prevailing in the courts of record of this state shall be observed, and the practice upon such hearings of claims and taking appeals from the final order of award made therein shall conform, as near as may be, to the practice now prevailing in the supreme court of this state upon the trial of actions, and upon appeals; but in no such appeal shall the appellant be required to give a bond or undertaking.

[As amended by chap. 60 of 1884.]

§ 12. On and after the thirty-first day of May, eighteen hundred and eighty-three, the office of canal appraiser and the state board of audit are abolished. All claims against the state then pending before the canal appraisers or before the state board of audit shall be and hereby are transferred to the board of claims. Said canal appraisers and said state board of audit are hereby directed to transmit to the clerk of the board of claims all papers, documents and evidence, in cases before either of said

bodies pending and undetermined on the thirty-first day of May, eighteen hundred and eighty-three.

§ 13. All the jurisdiction and power to hear and determine claims against the state, formerly possessed by the canal appraisers and the state board of audit, is hereby vested in the board of claims. Whenever a claim against the state is pending before said board of claims, which the canal appraisers have heretofore had jurisdiction to hear and determine, the board shall take testimony in the vicinity where the damages are alleged to have occurred, and the premises alleged to have been damaged shall be personally viewed by said board, and said board shall hold an adjourned session in said vicinity for the purpose of hearing said claim.

[As amended by chap. 60 of 1884.]

§ 14. Suitable rooms shall be assigned in the new capitol for the sessions of the board of claims, and for the office of the clerk. Said commissioners and clerk shall have the use of the books in the state library in the course of their official duties. The legislature shall annually appropriate such sum as shall be necessary, not exceeding five thousand dollars, as a contingent fund for the use of said board.

§ 15. Costs, witness fees and disbursements shall not be taxed, nor shall counsel or attorney fees be allowed by said board to any party.

Record in The People ex rel. The Equitable Life Assurance Society vs. Chapin as Comptroller (105 N. Y., 629).

COURT OF APPEALS,
State of New York, } *ss.:*

Pleas in the Court of Appeals held at the Capitol, in the City of Albany, on the 25th day of March, in the year of our Lord one thousand eight hundred and eighty-seven, before the Judges of said Court.

Witness—

The Hon. WILLIAM C. RUGER, *Chief Judge*, presiding.

E. O. PERRIN, Clerk.

Remittitur, March 26, 1887.

The PEOPLE *ex rel.* The EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Appellant,

against

ALFRED C. CHAPIN, as Comptroller of the State of New York,

Respondent.

Be it remembered that on the third day of December, in the year of our Lord one thousand eight hundred and eighty-six, The Equitable Life Assurance Society, &c., the appellant in this action, came here into the Court of Appeals by Charles H. Moore, its attorney, and filed in the said Court a Notice of Appeal and return thereto from an

order of the General Term of the Supreme Court of the State of New York. And

Alfred C. Chapin as Comptroller, &c. the respondent in said action, afterward appeared in said Court of Appeals by D. O'Brien, Attorney General, which said Notice of Appeal and the return thereto filed as aforesaid, are herewith annexed.

Whereupon the said Court of Appeals having heard this cause argued by Mr. Frank E. Smith, of counsel for the appellant, and by Mr. D. O'Brien, Attorney General, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the General Term of the Supreme Court appealed from in this action be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this Court be remitted to the said Supreme Court then to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed with costs as aforesaid.

And Hereupon as well as the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid by them given in the premises, are by the said Court of Appeals remitted unto the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

E. O. Perrin,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, March 26, 1887.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the

Court of Appeals, with the papers originally filed therein, attached thereto.

[L. S.] E. O. PERRIN,
Clerk.

At a Special Term of the Supreme Court held in and for the County of Albany, at the Court-house therein, on the 18th day of March, 1886.

Present—Hon. A. B. PARKER, *Justice*.

THE PEOPLE *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

vs.

ALFRED C. CHAPIN, as Comptroller of the State of New York.

On reading and filing the petition of the Equitable Life Assurance Society of the United States, and the affidavit of Frank E. Smith, both verified March 17, 1886, and on motion of Charles H. Moore, attorney for said relator,

Ordered, That a writ of *certiorari*, according to the prayer of said petition, issue out of and under the seal of this Court, directed to Hon. Alfred C. Chapin as Comptroller of the State of New York, and returnable at the office of the Clerk of Albany County within twenty days after the service thereof.

Enter.

A. B. PARKER,
J. S. C.

The People of the State of New York on the relation of The Equitable Life Assurance Society of the United States, to Alfred C. Chapin, as Comptroller of the State of New York, greeting :

Whereas, We have been informed by the verified petition of the Equitable Life Assurance Society of the United States, and the affidavit of Frank E. Smith, both sworn on the 17th day of March, 1886, that the said Assurance Society is the owner and holder of a mortgage upon one hundred and eighty acres of land in the northeast corner of Lot No. 18, Township No. 3, Old Military Tract, town of Black Brook, Clinton County ; that said land was sold for unpaid taxes by the Comptroller of the State, at the tax sales of 1877 and 1881, at each of which sales the People of the State became the purchaser ; that the said Assurance Society made application to you on the 20th day of November, 1885, to cancel each of said sales, pursuant to the statute in such case made and provided, upon the ground that said sales and each of them were illegal and invalid, and submitted evidence to you showing such illegality and invalidity, which application you denied and refused to grant, and the said petitioner claims that such action on your part was illegal, and that it has been and is injured and aggrieved thereby :

And we being willing to be certified of your proceedings decisions and actions in the matter of the said application, and in denying and refusing the same, and all things appertaining thereto, do command you, that within twenty days after the service hereof upon you, you do certify and return to us at the office of the Clerk of Albany County, according to the provisions of title II., chapter 16, of the Code of Civil Procedure, all your proceedings and decisions in the premises, including the said application of The Equitable Life Assurance Society of the United States, to cancel the sales of one hundred and eighty acres of land in the northeast corner of lot No. 18, Township No. 3, Old Military Tract,

town of Black Brook, Clinton County, made on the tax sales of 1877 and 1881; the affidavit of Charles H. Moore and John M. Wever, and the certificate of the Clerk of Clinton County, submitted to you with the said application; and also all records and documents on file in your office relating to the said sales or either of them, and all other papers or evidence before you on making your decision denying the said application, together with this writ; to the end that the proceedings, decisions and actions had and taken by you in the matter of the said application may be reviewed and corrected by our Supreme Court, and that we may further cause to be done thereupon what of right and according to law should be done.

Witness, Hon. Alton B. Parker, Justice of our Supreme Court, at Albany, N. Y., this 18th day of March, 1886.

[L. S.] WM. D. STREVELL,
Clerk.

CHARLES H. MOORE,
Attorney for Relator,
Plattsburgh, N. Y.

Indorsed:

The within writ of certiorari is hereby allowed this 18th day of March, 1886.

A. B. PARKER,
J. S. C.

To the Supreme Court of the State of New York:

The petition of the Equitable Life Assurance Society of the United States respectfully shows:

I.—That it is a corporation duly organized and existing under and by virtue of the Laws of the State of New York.

II.—That on or about the 27th day of November, 1873, Christopher F. Norton executed and delivered to your petitioner a mortgage to secure payment of the sum of fifty thousand dollars, which mortgage was upon and covered a parcel of one hundred and eighty (180) acres of land in the northeast corner of Lot eighteen (18), Township No. 3, Old Military Tract, in the town of Black Brook, county of Clinton, and also other lands, the entire amount of which said mortgage is now due and unpaid.

III.—That, as your petitioner is informed and believes, said parcel of one hundred and eighty acres of land was sold by the Comptroller of this State at the tax sale of 1877 for the unpaid taxes of the years 1866, 1867, 1868, 1869 and 1870, and at such sale was bid in by the Comptroller and thereafter conveyed by him to the People of this State.

That at the sale of 1881, the said parcel of land was again, in form, sold and conveyed by the Comptroller to the People of this State for the unpaid taxes of the years 1871, 1872, 1873, 1874, 1875 and 1876.

IV.—That, as your petitioner is informed and believes, on the 20th day of November, 1885, an application was duly made to the Hon. Alfred C. Chapin, as Comptroller of the State of New York, pursuant to the statute in such case made and provided, to cancel and set aside the said sales, and each of them, as illegal and invalid, which application was in the words and figures following; that is to say:

IN THE MATTER

of

The Application of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, to cancel the tax sales of 1877 and 1881 as to a portion of Lot No. 18, Township No. 3, Old Military Tract, town of Black Brook, Clinton County.

To Hon. ALFRED C. CHAPIN, *Comptroller of the State of New York:*

SIR—On the affidavits of Charles H. Moore and John M. Wever, and the certificate of the Clerk of Clinton County, which are herewith submitted to you, you are requested to cancel the sale of one hundred and eighty acres of land in the northeast corner of Lot No. eighteen (18), Township No. three (3), Old Miltary Tract, situate in the town of Black Brook, Clinton County, N. Y., made by the Comptroller to the People of this State on the tax sale of 1877 for unpaid taxes of the years 1866, 1867, 1868, 1869 and 1870, on the ground that the assessment for taxation in said town of Black Brook, for the year 1869, was irregular and illegal in that the oath of the Assessors of said town, to the assessment-roll of that year, was sworn before a notary public, and not before a Justice of the Peace of said town, as required by law; and also that the said oath so taken by said Assessors is not the oath in form or in substance required by the statute.

You are also requested to cancel the sale of the said one hundred and eighty (180) acres of land made at the tax sale of 1881, by the said Comptroller to the People of this State for unpaid taxes of the years 1871, 1872, 1873, 1874, 1875 and 1876, on the ground that at said

tax sale said property was treated by the said Comptroller as already belonging to the State by force of the said tax sale of 1877, and that no opportunity was afforded to other persons to bid upon the same.

You are also requested to appoint a time and place for the hearing upon this application at which said Assurance Society may have an opportunity to present further evidence, and be heard by counsel in support of this application, and to give reasonable notice thereof to said Society, or its attorney.

Yours respectfully,

CHARLES H. MOORE,
Attorney for The Equitable
Life Assurance Society,
Plattsburgh, N. Y.

V.—That the following is a copy of the affidavit of Charles H. Moore referred to in said application and submitted to the Comptroller therewith, namely,

"STATE OF NEW YORK, } ss.:
County of Clinton, }

Charles H. Moore, being duly sworn, says that he is an attorney at law, and resides at Plattsburgh, N. Y., and is the attorney both in fact and at law for The Equitable Life Assurance Society of the United States.

That said Equitable Life Assurance Society of the United States is the owner and holder of a mortgage upon one hundred and eighty acres (180) of land in the northeast corner of lot eighteen (18), Township No. three (3), Old Miltary Tract, in the town of Black Brook, County of Clinton, which mortgage was executed by Christopher F. Norton and wife, and is dated November 27th, 1873, and that at the time of the execution of said mortgage, the said Norton was the owner in fee of the said mortgaged premises as appears by the records in the office of the Clerk of the County of Clinton; that said mortgage covers other lands; that there is upwards of fifty thou-

sand dollars due on said mortgage, and that a suit has been brought by said Equitable Life Assurance Society to foreclose the same, and that a decree of foreclosure has been granted in the said action, but that no sale has yet been had.

The said lot number eighteen (18) aforesaid is now and for upwards of twenty years last past, has been situated in the town of Black Brook; that deponent is informed and believes, that said one hundred and eighty acres in the northeast corner of said Lot Number eighteen (18), Township Number three (3), Old Military Tract, was sold by the Comptroller at the tax sale of 1877 for unpaid taxes of the years 1866 1867, 1868, 1869, 1870, and that the same has since been conveyed by said Comptroller to the People of the State, and that said one hundred and eighty acres were also, in form, sold by the Comptroller to the People of the State of New York at the tax sale of 1881, for unpaid taxes of 1871, 1872, 1873, 1874, 1875, 1876, and has since been conveyed by the Comptroller to the People of the State, as appears by the records in the office of the Comptroller.

That deponent was present at said tax sale of 1881, desired and offered to bid upon said one hundred and eighty acres, but that Col. S. W. Parks, the representative of the Comptroller who conducted said sale, refused to accept or receive any bid from deponent, upon the ground, as then stated by said Parks, that the said one hundred and eighty acres belonged to the State by reason of the aforesaid purchase of the same at the said tax sale of 1877, and conveyance thereof to the People of the State thereunder, as aforesaid.

That deponent is advised the effect of chapter 448 of the Laws of 1885, will be to perfect the title of the People of this State to said one hundred and eighty acres, derived from said tax sales of 1877 and 1881, by cutting off the right now secured by law to said Assurance Society of procuring the cancellation of said sales unless such cancellation is made by the Comptroller before the

9th day of December, 1885, for which reason deponent asks an order to show cause returnable in less than eight days, why a mandamus should not issue requiring the Comptroller to cancel said tax sales and deeds.

That no previous application for such order to show cause has been made.

That deponent is informed and believes that at the time of the tax sale of 1881 the State had no title to or interest in said one hundred and eighty acres, except such as it derived from said tax sale of 1877.

CHARLES H. MOORE.

Subscribed and sworn to before me this 16th day of November, 1885, by Charles H. Moore to me known and whom I certify to be a credible person.

M. F. PARKHURST,
Notary Public, Clinton Co."

VI.—That the following is a copy of the affidavit of John M. Wever, referred to in said application, and submitted to the Comptroller therewith :

STATE OF NEW YORK, }
Clinton County, } *ss.:*

John M. Wever, being duly sworn says, that he is the Treasurer of the County of Clinton, and as such Treasurer has the possession and custody of the assessment roll of the town of Black Brook, in said county, for the year 1869. That Schedule "A" hereto annexed is a true and correct copy of the oath of the assessors attached to the assessment roll of said town of Black Brook for the year 1869, and of the whole thereof.

J. M. WEVER.

Subscribed and sworn to before me this 6th day of November, 1885, by John M. Wever, to me known and whom I certify to be a credible person.

W. L. WEVER,
Notary Public.

SCHEDULE "A."

CLINTON COUNTY,
Town of Black Brook, } ss.

We the undersigned do severally depose and swear, that we have set down in the foregoing assessment roll all the real estate situated in the town of Black Brook according to our best information, and that with the exception of those cases in which the value of said real estate has been changed by reason of proof produced before us, we have estimated the value of said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt from a solvent debtor; and also that the said assessment roll contains a true statement of the aggregate amount of the taxable personal property of each and every one named in such roll, over and above the amount of debt due from such persons respectively and excluding such stock that is otherwise taxable, and such other property as is exempt by law from taxation, at the true and full value thereof, according to our best information and belief.

PHILIP ENGLISH,
SAMUEL BULLEN,
ISAAC W. LAKE, } Assessors.

Sworn to and subscribed before me
this 24th of September, 1869.

BENJ. E. WELLS,
Notary Public.

VII.—That the following is a copy of the certificate of the Clerk of Clinton County referred to in said application, and submitted therewith to the Comptroller:

"STATE OF NEW YORK,
Clinton County Clerk's Office, } ss.:

I, John P. Brenan, Clerk of the County of Clinton, hereby certify that I have made diligent search in my office

for a certificate of the election of Benjamin E. Wells, as a Justice of the Peace, for any term of office as such justice, which included the year 1869, and that there is no record in this office of the election or qualification of Benjamin E. Wells, as a Justice of the Peace for the town of Black Brook in said county, for or during the year 1869; but that the records of this office show that during the entire year 1869, Philip English, Elijah White, Daniel B. Hayes and John Daisey, persons of whom said Wells was not one, were the duly elected and qualified Justices of the Peace of the said town of Black Brook.

Witness my hand and official seal this 14th day of November, 1885.

[L. S.] J. P. BRENAN,
Clerk,
By J. N. LANDRY, Dep."

VIII.—That, as your petitioner is informed and believes, on said 20th day of November, 1885, the said Alfred C. Chapin, as Comptroller, as aforesaid, rendered a decision denying the said application for the reason that the grounds upon which the cancellation of said sales was asked, were insufficient in point of law, even if true in fact.

IX.—That, as your petitioner is advised by counsel, the said decision of the Comptroller was erroneous, and contrary to the evidence submitted to him and contrary to law.

Wherefore, your petitioner prays that a writ of certiorari may be allowed, and be issued out of, and under the seal of this Honorable Court, directed to the aforesaid Alfred C. Chapin as Comptroller of the State of New York, commanding him, the said Comptroller, to certify and return to this Court all and singular his proceedings, actions and decisions in the premises, together with copies of the said application for cancellation of the sales of said parcel of

one hundred and eighty acres of land, made at the tax sales of 1877 and 1881, as aforesaid, and of the affidavits of Charles H. Moore and John M. Wever, and the certificate of the Clerk of Clinton County referred to in said application, and submitted therewith to the Comptroller as aforesaid; and also of any documents or records in the office of the said Comptroller in anywise relating to the said sales of said parcel of land, or either of them.

To the end that the said decision and proceedings of said Alfred C. Chapin, as Comptroller of the State of New York, may be reviewed and corrected by this Honorable Court, and that the aforesaid error committed by him may be corrected, according to law, and that his decision aforesaid may be reversed and set aside.

And your petitioner will ever pray.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE U. S.

By CHAS. H. MOORE,
Agent.

STATE OF NEW YORK, }
Clinton County. }

Charles H. Moore, being duly sworn, says that he is the agent of the Equitable Life Assurance Society, and as such has charge of the lands owned by or mortgaged to it, in the County of Clinton. That he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief as to the matters not therein stated upon his knowledge, are the records and documents on file in the office of the Comptroller, and the accompanying affidavit of Frank E. Smith.

That the reason this verification is not made by the said petitioner is that it is a corporation.

CHAS. H. MOORE.

Sworn to before me this 17th day of March, 1886.

S. A. KELLOGG,
Clinton Co., Judge.

STATE OF NEW YORK, County of Clinton. } ss.:

Frank E. Smith, being duly sworn, says:

I.—That he is an attorney and counselor-at-law, and is counsel for The Equitable Life Assurance Society in this proceeding.

II.—That on the 20th day of November, 1885, as counsel for said Society, and in its behalf, he submitted to Hon. Alfred C. Chapin, as Comptroller of the State of New York, an application to cancel the sale of one hundred and eighty acres of land in the northeast corner of Lot No. 18, in Township No. 3, Old Military Tract, in the town of Black Brook, County of Clinton, made by the Comptroller on the tax sales of 1877 and 1881.

III.—That he has read the foregoing petition verified by Charles H. Moore, March 17, 1886, and that it correctly recites the said application, and the affidavits of Charles H. Moore and John M. Wever, and the certificate of the Clerk of Clinton County, upon which said application was made, and which were submitted with it to the Comptroller.

IV.—That on the 20th day of November, 1885, the said application was denied by the said Comptroller, for the reason that the grounds upon which the cancellation of

said sales was asked were insufficient in point of law, even if true in point of fact.

V.—That no other or previous application for a writ of certiorari has been made herein.

FRANK E. SMITH.

Sworn to before me, this 17th day of March, 1886.

S. A. KELLOGG,
Clinton Co. Judge.

SUPREME COURT,

ALBANY COUNTY.

The People of the State of New York, on the relation of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

vs.

ALFRED C. CHAPIN, as Comptroller of the State of New York.

The answer or return of Alfred C. Chapin, as Comptroller of the State of New York, to the writ of *certiorari* hereto annexed.

By virtue of and in obedience to the writ of certiorari hereto annexed, and to me directed, I do hereby certify and return to the Clerk of Albany County, as Clerk of the General Term of the Supreme Court in and for the Third Judicial Department of the State of New York, in the city of Albany: That, on the 20th day of November, 1885, a petition was made to Alfred C. Chapin, the Comptroller

of the State of New York, by The Equitable Life Assurance Society of the United States, praying for the cancellation of the sale of one hundred and eighty acres of land, in the northeast corner of Lot Number eighteen (18), Township No. 3, Old Military Tract, situate in the town of Black Brook, Clinton County, N. Y., which petition is in the following words:

In the Matter

of

The Application of The Equitable Life Assurance Society of the United States, to cancel the tax sales of 1877 and 1881, as to a portion of Lot No. 18, Township No. 3, Old Military Tract, town of Black Brook, Clinton County.

To Hon. Alfred C. Chapin, *Comptroller of the State of New York:*

Sir—On the affidavits of Charles H. Moore and John M. Wever, and the certificate of the Clerk of Clinton County, which are herewith submitted to you, you are requested to cancel the sale of one hundred and eighty acres of land in the northeast corner of Lot No. eighteen (18), Township No. 3, Old Military Tract, situate in the town of Black Brook, Clinton County, N. Y., made by the Comptroller to the People of this State on the tax sale of 1877 for unpaid taxes of the year 1866, 1867, 1868, 1869 and 1870, on the ground that the assessment for taxation in said town of Black Brook, for the year 1869 was irregular and illegal in that the oath of the assessors of

said town to the assessment-roll of that year was sworn before a notary public, and not before a Justice of the Peace of said town as required by law, and also that the said oath so taken by said assessors is not the oath, in form or in substance, required by the statute.

You are also requested to cancel the sale of the said one hundred and eighty (180) acres of land made at the tax sale of 1881, by the said Comptroller to the People of this State for unpaid taxes of the years 1871, 1872, 1873, 1874, 1875 and 1876, on the ground that at said tax sale said property was treated by the said Comptroller as already belonging to the State by force of the said tax sale of 1877, and that no opportunity was afforded to other persons to bid upon the same.

You are also requested to appoint a time and place for the hearing upon this application, at which said Assurance Society may have an opportunity to present further evidence, and be heard by counsel in support of this application and to give reasonable notice thereof to said Society or its attorney.

Yours respectfully,

CHARLES H. MOORE,
Attorney for the
Equitable Life Assurance Society,
Plattsburgh, N. Y.

STATE OF NEW YORK, }
County of Clinton. } ss.:

Charles H. Moore, being duly sworn, says, that he is an attorney-at-law and resides at Plattsburgh, N.Y., and is the attorney both in fact and at law for The Equitable Life Assurance Society of the United States. That said Equitable Life Assurance Society of the United States is the owner and holder of a mortgage upon one hundred and eighty (180) acres of land in the northeast corner of Lot eighteen (18), Township No.

three (3), Old Military Tract, in the Town of Black Brook, County of Clinton, which mortgage was executed by Christopher F. Norton and wife, and is dated November 27, 1873, and at the time of the execution of said mortgage the said Norton was the owner in fee of the said mortgaged premises as appears by the records in the office of the Clerk of the County of Clinton. That said mortgage covers other lands. That there is upwards of fifty thousand dollars due on said mortgage, and that a suit has been brought by said Equitable Life Assurance Society to foreclose the same, and that a decree of foreclosure has been granted in the said action, but that no sale has yet been had. That said lot No. eighteen (18) aforesaid is now and for upwards of twenty years last past has been situated in the town of Black Brook. That deponent is informed and believes that said one hundred and eighty acres in the northeast corner of said Lot No. eighteen (18), Township No. three (3), Old Military Tract, was sold by the Comptroller at the tax sale of 1877 for unpaid taxes of the years 1866, 1867, 1868, 1869, and 1870, and that the same has since been conveyed by said Comptroller to the People of the State, and that said one hundred and eighty acres were also in form sold by the Comptroller to the People of the State of New York, at the tax sale of 1881, for unpaid taxes of 1871, 1872, 1873, 1874, 1875 and 1876, and has since been conveyed by the Comptroller to the People of the State, as appears by the records in the office of the Comptroller.

That deponent was present at said tax sale of 1881, desired and offered to bid upon said one hundred and eighty acres, but that Col. S. W. Parks, the representative of the Comptroller, who conduced such sale, refused to accept or receive any bid from deponent, upon the ground as then stated by said Parks, that the said one hundred and eighty acres belonged to the State by reason of the aforesaid purchase of the same at the said tax sale

of 1877, and conveyance thereof to the People of the State thereunder as aforesaid.

That deponent is advised, the effect of chapter 448 of the Laws of 1885, will be to perfect the title of the People of this State, to said one hundred and eighty acres derived from said tax sales of 1877 and 1881, by cutting off the right now secured by law to said Assurance Society, of procuring the cancellation of said sales unless such cancellation is made by the Comptroller before the 9th day of December, 1885, for which reason deponent asks an order to show cause returnable in less than eight days why a mandamus should not issue requiring the Comptroller to cancel said tax sales and deeds.

That no previous application for such order to show cause has been made. That deponent is informed and believes that at the time of the tax sale of 1881, the State had no title to, or interest in, said one hundred and eighty acres, except such as it derived from said tax sale of 1877.

CHARLES H. MOORE.

Subscribed and sworn to before me, this 16th day of November, 1885, by Charles H. Moore, to me known and whom I certify to be a credible person,

M. F. PARKHURST,
Notary Public,
Clinton Co

STATE OF NEW YORK, Clinton County. } ss.:

John M. Wever being duly sworn, says that he is the treasurer of the County of Clinton, and as such Treasurer has the possession and custody of the assessment-rolls of the town of Black Brook in said County for the year 1869. That schedule "A" hereto annexed is a true and correct copy of the oath of the

assessors attached to the assessment rolls of said Town of Black Brook for the year 1869, and of the whole thereof.

JOHN M. WEVER.

Subscribed and sworn to before me this 6th day of November, 1885, by John M. Wever, to me known and whom I certify to be a credible person.

W. L. WEVER,
Notary Public.

SCHEDULE "A."

CLINTON COUNTY, } ss.:
Town of Black Brook, }

We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the town of Black Brook according to our best information; and that with the exception of those cases in which the value of said real estate has been changed by reason of proof produced before us, we have estimated the value of said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt from a solvent debtor; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal property of each and every one named in such roll, over and above the amount of debt due from such persons respectively, and excluding such stock as is otherwise taxable, and such other property as is exempt by law from taxation, at the true and full value thereof, according to our best information and belief.

PHILIP ENGLISH,
SAMUEL BULLEN, } Assessors.
ISAAC W. LAKE,

Sworn to and subscribed before me, this 24th of September, 1869.

BENJ. E. WELLS,
Notary Public.

STATE OF NEW YORK,
Clinton County Clerk's Office, } ss.:

I, John P. Brenan, Clerk of the County of Clinton, hereby certify that I have made diligent search in my office for a certificate of the election of Benjamin E. Wells, as a Justice of the Peace, for any term of office as such justice which includes the year 1869, and that there is no record in this office of the election or qualification of Benjamin E. Wells, as a Justice of the Peace for the town of Black Brook, in said County for or during the year 1869. But that the records of this office show that during the entire year 1869, Philip English, Elijah White, Daniel B. Hayes and John Daisey, persons of whom said Wells was not one were the duly elected and qualified Justices of the Peace of the said town of Black Brook.

Witness my hand and official seal this 14th day of November, 1885.

[L. S.]

J. P. BRENAN,
Clerk.
By J. W. LANDRY,
Deputy.

That on the 21st day of November, 1885, by an order of the Supreme Court, the Comptroller was ordered to show cause on the relation of the petitioner herein, on the 24th day of November, 1885, why a peremptory mandamus should not issue requiring him to cancel the sale of said 180 acres of land in Clinton County, hereinbefore referred to. That on that 24th day of November, 1885, the said motion was duly denied by the Special Term of the Supreme Court, whereupon relator appealed to the General Term, which on the 24th of January, 1886, duly affirmed said order of the Special Term.

That relator has appealed from said order of the General Term to the Court of Appeals, which appeal is now pending and undetermined.

And I further certify and return that the lands mentioned in the moving papers herein were sold for the

non-payment of taxes returned by the County Treasurer of the County of Clinton for the years 1866, 1867, 1868, 1869 and 1870, and sold on the 10th day of October, 1877, and bid in by said Comptroller, for the State of New York, for the amount of said taxes, interest and expenses, amounting to the sum of $116.35, there being no other bidder; that thereafter said land was again duly sold for the taxes thereon for the years 1871, 1872, 1873, 1874, 1875 and 1876, for the sum of $768.93 taxes, interest and expenses due, and that at such sale the Comptroller, in pursuance of chapter 402 of the Laws of 1881, section 66, bid the same in for the State of New York, and refused to accept any other bid therefor; and the same has been duly conveyed to the State of New York, and that the only reason why said Comptroller has refused to cancel said tax sales, is that the Comptroller holds and decides, and is of the opinion that said sales were in all respects regular, and that the said Comptroller has no right by law, and is under no obligation, statutory or otherwise, to cancel said sale.

"And I further certify that I have compared the annexed extracts from the books of tax sales of land of non-residents made by the Comptroller in the years 1877 and 1881, with the originals now remaining in this office, and that such extracts are correct transcripts therefrom, and contain all that is stated in said books relating to 180 acres northeast corner of Lot 18, Township 3, Old Military Tract, Clinton County; and I further certify that no part of said 180-acre parcel has been redeemed from either of said sales, subsequent to the conveyance thereof to the State, and that no cancellation of either of said sales of any part of said 180-acre parcel has been made. All of which I do hereby certify and return as within I am commanded.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, at the City of Albany, this 31st day of March, 1886.

[L. S.] ALFRED C. CHAPIN,
Comptroller.

STATE OF NEW YORK, Albany County. } ss.:

I, William D. Strevell, Clerk of Albany County, do hereby certify that I have compared the foregoing copies of writ of *certiorari*, order for the same, and petition and papers upon which the same was granted, and the return of Alfred C. Chapin, as Comptroller thereto, with the originals of the same papers, all of which are on file in my office; and that the same are true copies of the said originals, and of the whole thereof.

Witness my hand and official seal, this
day of November, 1886.

[L. S.]

WM. D. STREVELL,
Clerk.

At a General Term of the Supreme Court of the State of New York, held in and for the Third Judicial Department of said State, at the City Hall, in the City of Albany, on the 16th day of November, 1886.

Present—Hon. WILLIAM L. LEARNED, *Presiding Justice;* Hon. J. S. LANDON, Hon. AUGUSTUS BOCKES, *Associate Justices.*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

vs.

ALFRED C. CHAPIN, as Comptroller of the State of New York.

This cause being upon the present calendar of this Court, upon a *certiorari* heretofore issued by the Special Term of the Supreme Court, on the 18th day of March, 1886, and the return thereto made by the respondent, Alfred C. Chapin, as Comptroller of the State of New York, and coming on to be heard,

Now, after hearing Mr. Frank E. Smith, of counsel for Charles H. Moore, attorney for the relator, and Mr. J. W. Hogan, in behalf of the Attorney-General, counsel for Alfred C. Chapin, as Comptroller of the State of New York, and due deliberation being had thereon,

It is ordered that the determination of the respondent, Alfred C. Chapin, as Comptroller of the State of New

York herein, be and the same hereby is, in all things affirmed, with $10 costs.

A Copy.

WM. D. STREVELL,
Clerk.

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

vs.

ALFRED C. CHAPIN, as Comptroller of the State of New York.

A writ of *certiorari* having heretofore and on the 18th day of March, 1886, been issued out of the Supreme Court, at Special Term thereof, directed to the respondent, Alfred C. Chapin, as Comptroller of the State of New York, and requiring him to make return thereof at a General Term of this Court, and the respondent having made a return to said writ of *certiorari*, and the proceeding coming on to be heard at a General Term of the Supreme Court held at the City Hall in the City of Albany, on the 16th day of November, 1886, and an order having been made and entered by said Court, adjudging that the determination of the respondent, Alfred C. Chapin, as Comptroller of the State of New York, should be, and the same are, in all things, affirmed, with ten dollars costs,

Now, on motion of D. O'Brien, Attorney-General, attorney for the respondent, Alfred C. Chapin, as Comptroller of the State of New York,

It is adjudged, that the determination of the respondent Alfred C. Chapin, as Comptroller of the State of New York, in said proceeding, be, and the same is, in all things affirmed, and that he recover the sum of ten dollars costs, and one dollar and twenty-five cents disbursements, in all eleven dollars and twenty-five cents, against the relator, The Equitable Life Assurance Society of the United States.

Sirs—Please take notice, that the foregoing is a copy of a judgment filed and entered in the office of the Clerk of Albany County on the 17th day of November, 1886.

Yours, etc.,

D. O'Brien,
Attorney-General and Att'y for Respondent.

To Charles H. Moore,
Attorney for Relator.

N. Y. SUPREME COURT.

The People of the State of New York upon the relation of The Equitable Life Assurance Society of the United States,
Appellant,

vs.

Alfred C. Chapin, as Comptroller of the State of New York,
Respondent.

Sirs—You will please take notice that The Equitable Life Assurance Society of the United States, the relator

above named, hereby appeals to the Court of Appeals from the final order and judgment of the Supreme Court, rendered at a General Term thereof, held in and for the Third Judicial Department, affirming the determination of Alfred C. Chapin, as Comptroller of the State of New York, brought up for review by this proceeding, which order and judgment were entered in the office of the Clerk of Albany County on the 17th day of November, 1886, and from each and every part of said order and judgment.

Dated November 20, 1886.

Yours, etc.,

CHARLES H. MOORE,
Attorney for Relator and Appellant,
Plattsburgh, N. Y.

To Hon. DENIS O'BRIEN,
Attorney-General and
Attorney for Respondent,
Albany, N. Y.

WILLIAM D. STREVELL, Esq.,
Clerk of Albany County.

THE PEOPLE *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY,

vs.

ALFRED C. CHAPIN, as Comptroller.

City and County of New York, *ss.:*

Frank E. Smith, being duly sworn, says: That he is the counsel for the relator in this proceeding. That no written

opinion was rendered by the General Term in affirming the decision of the Comptroller herein.

FRANK E. SMITH.

Sworn before me, this 27th day of November, 1886.

THOMAS TIERNEY,
Notary Public,
N. Y. Co.

STATE OF NEW YORK, Albany County, } ss.:

I, William D. Strevell, Clerk of Albany County, do hereby certify that I have compared the foregoing copies of order and judgment of the General Term, and the papers upon which the same were made, and notice of appeal therefrom, with the originals of the said papers now on file in my office, and that the same are correct transcripts therefrom and of the whole of said originals.

Witness my hand and official seal, this day of December, 1886.

WILLIAM D. STREVELL,
Clerk.

At a Special Term of the Supreme Court of the State of New York, held in the City Hall in the City of Albany on the 28th day of March, 1887.

PRESENT—The Hon. ALTON B. PARKER, *Justice Presiding.*

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

against

ALFRED C. CHAPIN, as Comptroller of the State of New York.

On reading and filing the Remittitur from the Court of Appeals to the Supreme Court herein, directing that the appeal from the judgment and order of the General Term herein, heretofore entered, be affirmed and the defendant recover the costs of the appeal to the Court of Appeals of the plaintiff appellants. Now on motion of Mr. D. O'Brien, attorney-general and attorney for plaintiff.

Ordered, that said decision be, and the same hereby is made the judgment of the Supreme Court and that judgment be entered herein affirming said judgment and order appealed from with costs in the Court of Appeals. Enter in Albany County.

A. B. PARKER,
Justice of the Supreme Court.

SUPREME COURT,

ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

against

ALFRED C. CHAPIN, as Comptroller of the State of New York.

An appeal having heretofore been taken to the Court of Appeals from the judgment and order of the General Term of the Supreme Court herein, entered November 17, 1886, in favor of the defendant and against the plaintiff, and said appeal having been duly considered by the Court and a decision having been rendered, whereby said judgment and order appealed from is affirmed with costs in that Court, to be recovered by the respondent of the appellant as appears by their Remittitur to this Court, which is this day filed.

Now, on reading and filing said remittitur, and the order of the Special Term of the Supreme Court held by Hon. Alton B. Parker, Justice of this Court, dated March 28, 1887, making the decision of the Court of Appeals the judgment of this Court, and the bill of costs of the defendant-respondent as taxed this day, and on motion of Mr. D. O'Brien, Attorney-General and attorney for defendant-respondent,

Ordered, that said judgment and order appealed from be and the same hereby is affirmed and that said defendant-respondent recover of the plaintiff-appellant the sum

of one hundred and ten dollars and fifty-seven cents and have execution therefor.

ROBERT H. MOORE,
Clerk.

STATE OF NEW YORK,
City and County of Albany Clerk's Office, } ss.:

I, James D. Walsh, Clerk of the said city and county, and also Clerk of the Supreme and County Courts, being courts of record held therein, do hereby certify that I have compared the annexe copy, Return Remittitur, Order and Judgment with the original thereof, filed in this office on the 29th day of March, 1887 and that the same is a correct transcript therefrom and of the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 25th day of April, 1895.

[SEAL.] JAMES D. WALSH,
Clerk.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* JOHN H. MILLARD *et al.*,
Appellants,

against

JAMES A. ROBERTS, Comptroller of the State of New York,
Respondent.

(Decided January 26, 1897).

ARTHUR L. ANDREWS, for appellants; T. E. HANCOCK, for respondent.

O'BRIEN, *J.*—The relators applied to the Comptroller, alleging that they were the owners of certain lands in the County of Franklin, which had been sold for taxes in the year 1881, and bid in by the Comptroller for the State. They asked that the sale be cancelled and set aside on account of certain defects and irregularities specified in the moving papers.

The Comptroller denied the application, and the Appellate Division, upon *certiorari*, affirmed his determination. It is not necessary to notice the particular defects or irregularities in the sale that are claimed to constitute the grounds of the application, since, we think, the relators have no standing to make this application.

It has been repeatedly held by this Court that, in cases of tax sales of lands, the owner cannot reclaim the lands sold by such a proceeding as this. The Comptroller has no power to set aside the sale upon the application of the owner, since the statute was not intended for his benefit, but for the benefit of the purchaser who has paid his money to the State upon the

faith of a title supposed to be valid, but which turns out to be defective or void. Within recent years the statute of 1855 has been amended, but none of these amendments, in any way, aid the relators in this case. The objections which have been so often stated to the exercise of this jurisdiction, at the instance of the owner, still remain good (People *ex rel.* Wright *vs.* Chapin, 104 N. Y., 369; People *ex rel.* Ostrander *vs.* Chapin, 105 N. Y., 309; Ostrander *vs.* Darling, 127 N. Y., 70; People *ex rel.* Hamilton Park *vs.* Wemple, 139 N. Y., 240; People *ex rel.* Witt *vs.* Roberts, 144 N. Y., 234).

It will be seen upon a careful examination of these cases that they cover all the statutes now in force conferring power upon the Comptroller to set aside sales of lands for taxes, but none of them are yet comprehensive enough to enable an owner to repossess himself of the lands sold in such a way. If the sale is invalid, his title is not affected, and he may keep and defend his possession, or, if put out of possession, he may regain it by action of ejectment.

It is obvious that there was no intention to modify or disturb these decisions by anything that was said in the case of People *vs.* Turner (117 N. Y., 227; 145 N. Y., 451).

The case was correctly decided in the Court below, and the order appealed from should be affirmed, with costs.

All concur.

Order affirmed.

Copy,

E. H. Smith,
Reporter, C.